

I N D E X

<u>SESSION:</u>	<u>PAGE:</u>
Welcoming Remarks	5
Introduction of Participants	14
Access: Marketers' Desire to Reach Consumers and the Methods They Use	29
Annoyance: Consumers' Desire to Limit Unwanted Calls	83
Current Regulatory Approaches	131
Brainstorming Session - What's Next?	180
Open Microphone	235

FEDERAL TRADE COMMISSION

TELEMARKETING SALES RULE

"DO-NOT-CALL" FORUM

MATTER NO. P994414

FEDERAL TRADE COMMISSION

600 PENNSYLVANIA AVENUE, N.W.

ROOM 432

WASHINGTON, D.C. 20580

TUESDAY, JANUARY 11, 2000

8:45 A.M.

For The Record, Inc.
Waldorf, Maryland
(301)870-8025

PARTICIPANTS

Eileen Harrington, Federal Trade Commission
Katie Harrington-McBride, Federal Trade Commission
Carole Danielson, Federal Trade Commission
Allen Hile, Federal Trade Commission
Karen Leonard, Federal Trade Commission
Keith Anderson, Federal Trade Commission

Marc Beauchamp North American Securities
Administration
Joyce Brundage National Federation of
Nonprofits
Robert Bulmash Private Citizen
Jason Catlett Junkbusters
Wanda Delaplane National Association of
Attorneys General
Mallory Duncan National Retail Federation
Neal Fishman National Association of
Attorneys General
William Gilles National Association of
Regulatory Utility
Commissioners
Linda Goldstein Promotion Marketing Association
Susan Grant National Consumers League

PARTICIPANTS (continued)

Jeff Kramer	AARP
Gordon McKenna	American Teleservices Association
David Mortman	Callcompliance.com
Michael Pashby	Magazine Publishers of America
Timothy Phillips	National Association of Consumer Agency Administrators
Robert Sherman	Direct Marketing Association
Russ Smith	Consumer.net
Kathleen Torlucci	KTW Consulting

P R O C E E D I N G S

- - - - -

WELCOMING REMARKS

MS. HARRINGTON: Good morning. It's 8:45, and that's when the agenda says we're going to begin, and so we are beginning.

My name is Eileen Harrington, and I'm the associate director for marketing practices here at the FTC. The marketing practices program is the one that has responsibility for our work in the telemarketing area.

Today we are going to explore the do-not-call, the existing provisions of the Telemarketing Sales Rule and other questions and concerns that arise around perhaps competing interests between the business interest in marketing, in reaching customers and potential customers, and the interest of consumers in having some power over the inflow to their homes of marketing calls.

This forum is the beginning of the FTC's review -- formal review of its Telemarketing Sales Rule, which was promulgated in 1995 at the direction of the Congress. There are some basic ground rules that I want to go over first of all for today's forum and then talk a bit more about what we hope to accomplish.

Because this forum is both part of the record in our review of the Telemarketing Sales Rule and also a public event and forum concerning public policy, we are transcribing today's session, and we have a fabulous stenographer with us, I can attest to her amazing ability, because she did another workshop that we had recently which was quite interesting information packed and contentious, and she didn't miss a word. But we need to do some things here at the table to make it easier for her and possible for her to do her job.

First of all, when you speak, when I recognize you to speak, would you please say your name and initially identify the organization that you are representing. As the day goes, she'll become completely familiar with your organization, and she also has a list, as all of you do, on the back of the agenda of the organizations that each participant here at the table represents, but for the beginning part of the day, it's very important when you speak to identify yourself for the record.

We will take some breaks during the day, and hopefully that will be sufficient to permit our stenographer to regroup, but if for some reason she signals me that we need a short break, we'll be taking that.

We intend to stick very strictly to the agenda and the times in the agenda. So, everything will happen -- for those of you who are just coming in or those who are not here yet, we start on time, and we stay on time.

The process for discussion here at the table will be that if you want to speak, you need to put your name tent up, and I will be keeping track of who has asked to speak approximately in the order that I see your name cards, but I am moderating this discussion, and I will feel free to call on people out of order if I think that it's likely that there may be some useful point of view that one participant has that might be a good follow-on to what has just been said or to the subject that seems to be on the table.

Also, if there -- if participants, rather than engaging in conversation, engage in sort of statement-making and speechifying, then I'm not going to call on them as frequently, because that's really not what we're looking for today. What we want to have is a discussion about the tension, I think, that exists between legitimate interests that businesses have in doing their marketing and concerns that consumers have about their perceived inability perhaps to control as much as they would like the incoming calls that they

receive. That is a tension.

We all understand that, and we want to talk about the state of marketing, about the concerns of consumers and others, about the FTC rule, the do-not-call requirement, whether it is working, whether it needs to be tweaked or modified, whether there are additional nonregulatory steps that could be made. Those are the kinds of issues that we want to have discussion about.

My colleagues from the FTC staff, let me introduce them to you, who are also working on this project are Katie Harrington-McBride. Some think that Katie might be my much younger sister, but she's not. We have no relation other than a real interest in this issue and a working relationship. Katie is the staff attorney who is going to be responsible for leading the Telemarketing Sales Rule review project.

Carole Danielson also is lending a very able hand. Carole was involved in the team of FTC staff that did the initial work on the Telemarketing Sales Rule, and she has both an outstanding institutional knowledge and very great skill in this area.

Karen Leonard, an attorney in our division, is working on the team, as well. Karen joined us not all that long ago, and we are delighted to have her with

us.

Keith Anderson is from our Bureau of Economics, and he will be also working with the team as it examines the rule and goes through this proceeding. Keith, I don't remember, were you on the rule team the last -- the first time around?

MR. ANDERSON: (Nodding.)

MS. HARRINGTON: So, Keith also has been with this issue and has made excellent contributions over the years. And last but certainly not least, Allen Hile, who is the assistant manager in our division and handles all of this work and also has tremendous skill and knowledge in this and other areas.

During the day, Allen or Katie may take over for a time moderating, and so we are all kind of interchangeable.

Let me tell you why we're having this workshop and why we're kicking off the Telemarketing Sales Rule review with this issue.

As many of you know, especially those of you -- and there are many of you here who were part of the first rulemaking procedure -- as many of you know, the FTC's and I think the Congress' principal concern back in 1994 and 1995 when legislation and rulemaking were done on telemarketing was to give the Commission and the

state attorneys general some new and clear and tough tools to fight against fraudulent telemarketing. Then we and the attorneys general made very clear that our principal interest in this area was to stop fraud, and since the Telemarketing Sales Rule was issued in 1995, the Federal Trade Commission and the attorneys general have brought hundreds and hundreds of enforcement actions in this area.

We know from our own complaint data here at the FTC that telemarketing fraud has dropped as a complaint category in terms of its standing in our top ten. Telemarketing fraud hasn't gone away. It is still a big problem. Others may have moved on to the frauds du jour, but we are still very committed to fighting the fight against fraudulent telemarketing, and we will continue to do that work.

At the same time, over the past five years, there has been an increasing degree of attention that focuses on consumer sovereignty and consumer privacy with regard to direct marketing. The online privacy debate has I would say fueled an offline privacy discussion that has been taking place principally I think at the state level, which is as it often is in our democracy, that in the states, the discussions that ultimately are held in the Nation's Capitol may be in a

sense had and rehearsed and vetted, and we know that many states have considered and some have enacted new state laws that some would say increase consumers' sovereignty with respect to being able to control incoming telemarketing calls.

The FTC rule, at the direction of Congress, gives consumers the right to tell telemarketers that they don't want to receive further calls from them, and telemarketers are required, under the terms of that rule, to not do further calls. The kinds of complaints that we hear about telemarketing here at the FTC still primarily concern misrepresentation, deception and fraud. We also receive complaints from consumers who tell us that the "do-no-call" provision hasn't worked for them, that they have requested that no more calls be placed to them, but they continue to receive them. And I would note that last week, the FCC announced an enforcement action under the Telephone Consumer Protection Act concerning do-not-call.

Let me give you a flavor of the kinds of things we're hearing from consumers. Yesterday our call center at the FTC, which receives thousands of calls a month from consumers all over the country calling in on the Commission's toll-free line about a whole variety of consumer concerns, our call center received a call

yesterday afternoon from a woman from San Antonio, Texas who says that she's disabled, that she's received numerous calls from telemarketers, that she asks them not to call again, but she keeps receiving the calls, and she's disappointed that legislation that the State of Texas was considering to set up a state-wide do-not-call regime did not pass.

Another consumer sent me an e-mail last night, and she says, "The reason for me, at least, that telemarketer calls are so offensive is that they take my time. It's not rather they are rude or polite or hard to get rid of. The problem is that I need to interrupt what I am doing and often interrupt an important call to deal with the unwanted caller. I do gardening and work with my horses during the day, so interruptions are very inconvenient, not just a matter of reaching for the phone. I really feel for disabled people for whom getting to the phone each time might be even more of a problem," as the consumer who called in from San Antonio described.

"I pay for caller ID. I have paid for number blocking to try to avoid these callers, but I still need to interrupt whatever I am doing when they call, and simply not answering only invites them to call again later. The blocked number blocking doesn't help, since

most are unknown, not blocked, and the blocking is an inconvenience to my friends and family. I do have an answering machine, but I work at home with clients calling frequently, and I have friends and family, so I need to answer legitimate calls, not have them go through to a machine.

"Having the machine screen the calls would also not prevent the company from continuing to call. I ask every telemarketer to place me on their do-not-call list, but many of them call back just the same. Some hang up rather than take my information, and if they were calling from a Centrex system, the Caller ID only registers 'number unknown,' so I do not know who they were.

"Also, many of the calls are hang-ups right away, because the automated calling systems get more answers than they have salespeople, so the system discards the extras. In these cases, no one has the opportunity to ask to be put on the list. If their name, number register on the Caller ID, I call them back, if possible -- many systems do not accept incoming calls -- or look up their company offices and speak to an owner or manager. Again, a huge waste of my time and attention.

"I do keep informal notes of the times,

companies and names of the callers. I should start a more formal log, but if I want to document the situation to take advantage of the do-not-call rule, I would need to send each caller -- often two to three per day -- a letter, return receipt requested, and keep a copy for myself. Again, more time and expense on my part."

And she continues, but I thought that her e-mail to me fairly captured the frustration that we hear from some consumers here at the FTC.

INTRODUCTION OF PARTICIPANTS

MS. HARRINGTON: So, with that introduction, I would like to ask each of our round table participants to introduce themselves, identify the organization that they represent, and then please tell me in one sentence what your organization is principally concerned about today in today's discussion.

I think we'll start with Mallory, because he's sitting right across the table from me, and Mallory is a veteran and survivor of the original telemarketing sales rulemaking.

MR. DUNCAN: Well, thank you, Eileen.

I'm Mallory Duncan. I am general counsel for the National Retail Federation. The National Retail Federation is the largest association representing the retail industry. Most of our members are household

names, companies from Saks to Sears to Home Depot to the corner haberdasher.

If I -- there were one issue I think that is of concern to our members is the fact that because so many of them are household names, they think -- they believe that consumers make a distinction between a lot of them with whom customers deal on a regular basis and perhaps unknown callers who are sort of cold calling, and so they'd like that distinction to be recognized and find a way of satisfying the consumers while still staying consistent to it.

MS. HARRINGTON: Thanks, Mallory.

I see that Jodie Bernstein has just come in. I don't know whether all of you know Jody, but I bet you do. Jody is the director of the Bureau of Consumer Protection.

MS. BERNSTEIN: Good morning, everybody.

MS. HARRINGTON: Jodie, did you want to say anything?

MS. BERNSTEIN: Not a word. I was thinking I would just ring the phone and see if any of you answered.

MS. HARRINGTON: Okay, thanks, Mallory.

Wanda?

MS. DELAPLANE: My name is Wanda Delaplane, and

I'm here today for the National Association of Attorneys General. Normally Sarah Resnick would be here, but she had another conference in California.

My full-time job is as an Assistant Attorney General for the State of -- for the Commonwealth of Kentucky. I am a survivor of the original rules committee. I -- and also here today is Neal Fishman, who is an Assistant Attorney General for Connecticut who may be saying something, and I believe Neal is also a survivor.

One sentence on the states, the Attorney General's office and what we are seeing is -- and I can't come up with a word that's strong enough, but an intense interest by the citizens of the state in something to do to address the problem of unwanted and unsolicited telephone calls, intense.

MS. HARRINGTON: Thank you, Wanda. And when people in Kentucky get intense, they're a pretty laid-back group, so that's -- Gordon?

MR. MCKENNA: Good morning. My name is Gordon McKenna, and I am president of the American Teleservices Association, and I'd like to thank you for the invitation for us to be at this forum today.

My purpose for being here is to represent our industry. Again, similar to the Retail Association, we

have household names, we have a number of large public companies in our industry that do -- are the end result of outsourcing for the business community, and I'm here to represent that and make sure that the economic side of our association and our industry gets represented.

MS. HARRINGTON: Thank you.

MR. MCKENNA: Thank you.

MS. HARRINGTON: Now, you probably think that we are going to just go around the table in order, but we're not. Let's hear from Susan Grant for a different point of view, I bet.

MS. GRANT: Thank you. Shouldn't we have T-shirts that say, "I survived the Tele --"

MS. HARRINGTON: Yes, and actually, that's a nice opportunity for me to say thank you so much to the Magazine Publishers for providing coffee this morning, and if somebody else wants to provide T-shirts, that would be fine, as well.

Susan, go ahead.

MS. GRANT: I'm Susan Grant, vice president for public policy at the National Consumers League.

The League is the oldest nonprofit consumer organization in the U.S., maybe even older than the telephone, I'm not sure. We operate a telemarketing fraud hotline, so we're obviously concerned about the

problems that consumers have distinguishing legitimate from fraudulent telemarketing calls and resisting aggressive sales tactics, but our concerns are broader than just fraud. We believe that consumers have the right to privacy and peace of mind and that public and corporate policies should be aimed at giving consumers more control over their telephones and better ability to exert that control.

I'm happy to be here today to learn more about how that can be achieved.

MS. HARRINGTON: Thank you, Susan.

Bob Sherman.

MR. SHERMAN: Thank you, Eileen. I'm also a survivor. I'm Bob Sherman, outside general counsel to the Direct Marketing Association.

DMA is the largest and oldest organization representing direct to the consumer marketers across all media. Obviously telephone is one of the very important media that DMA members use. We believe the rule in its current form strikes a very good balance between the needs of consumers and the needs of business. We're certainly willing and are here to try to contribute whatever we can -- whatever we can, to discuss any potential changes, but we would like the Commission and others to try to keep in mind the balance between being

commerce friendly and consumer friendly. We think that can be achieved.

MS. HARRINGTON: Thank you.

Mr. Bulmash?

MR. BULMASH: Thank you, Eileen. My name is Bob Bulmash. I'm president and founder of Private Citizen, Incorporated. Private Citizen's view of telemarketing is that it is a violation of an individual's right to be left alone in their own home and that their supremacy in their home regarding privacy is ultimate. There is no balance. If a person doesn't want to receive telemarketing calls, they shouldn't receive it.

We have around 4000 members across the nation. We notify firms on behalf of our members of our members' unwillingness to be called, and we tell firms that if they are called, that their call to our member will be an acceptance of our member's offer to allow that call on a for-hire basis of \$500 per call. That stipulation was created before the FTC sale -- Telephone Sales Rule and before the TCPA.

I guess generally our job is to ensure that some day there is effective, with a capital E, effective regulation of the direct marketing industry's privacy abusive progresses -- and I'm not saying that in a derogatory fashion, it's descriptive -- and that we do

establish a right to be left alone by commerce when we wish to be.

MS. HARRINGTON: Thank you.

Joyce?

MS. BRUNDAGE: Yes, I'm Joyce Brundage, and I'm here today representing the National Federation of Nonprofits. National Federation is an organization which has about 300 members in the nonprofit and charitable community and also for companies who provide services to nonprofits. I myself am from Public Interest Communications, and we are a telefundraising agency, and so we work very closely with nonprofit organizations.

The reason why we're here today is because we're very interested in the impact of the do-not-call issue on nonprofits and their ability to raise money.

MS. HARRINGTON: Thank you.

Tim?

MR. PHILLIPS: Timothy Phillips, Assistant Attorney General for the State of Tennessee. I'm here on behalf of the National Association of Consumer Agency Administrators.

I guess if it's one sentence, I -- and I'm sorry I'm going to echo somewhat here, but consumers have a right I think, especially in their home, to a certain

degree of privacy. We all answer the -- we all listen to the ring of the phone with a different attitude, I think.

Frankly some of us think, oh, they'll call back if it's really important or they'll leave a message. Not everyone's like that. Everyone -- some people do get to the phone because they think it's very important to them, and a lot of times, especially if it is one of the predictive dialers, frankly, there is just nobody there, and I think that the interest that's been driven from consumers, certainly at the state level, certainly suggests that some type of do-not-call list certainly is a good thing.

MS. HARRINGTON: Thanks, Tim.

Linda?

MS. GOLDSTEIN: Thank you, Eileen. I'm Linda Goldstein, and I'm here today representing the Promotion Marketing Association.

The Promotion Marketing Association has been the leading trade association representing the promotion marketing industry since 1911. Our members also include many of this country's leading consumer product and service companies, many of whom use telemarketing as one of many different types of marketing tools.

I think if I were to articulate one interest

that our members have today with respect to the do-not-call list, it is also the proper balancing of consumer privacy interests with another interest which we think is equally important, and that is consumer choice. Our members are very concerned and truly believe that many consumers do distinguish between some of the less desirable calls they may receive and calls they receive from established and legitimate companies with whom they have existing relationships or whose products and services they may be interested to hear about, and so we are concerned that the do-not-call provisions preserve for the consumer the opportunity to maintain that choice.

MS. HARRINGTON: Okay, thank you.

Marc?

MR. BEAUCHAMP: Thank you, I'm Marc Beauchamp representing the North American Securities Administration, a group of state securities administrators, and I'm here to talk a little bit about the abusive telemarketing as the scourge it really has been on the securities industry for a number of years now, both in the penny stock and the microcap stock arena and the billions of dollars that are lost by investors, and this is a big concern of ours that we are now truly a nation of shareholders.

And if I look a little bleary eyed, it's because I just flew in from San Diego this morning, where we had our annual enforcement conference, and we had a very interesting panel on the future of telemarketing fraud, and I could talk a little bit about that during the course of today's discussions.

MS. HARRINGTON: Thanks, Marc. Thanks for going to such lengths to be here. That's -- you have -- Mike Pashby is sitting next to you to thank for the coffee. Mike arranged for it just for you.

Okay, let's hear from David Mortman.

MR. MORTMAN: I think that we're the ideal next speaker around the table. We're a private company, and our focus is to strike that balance between consumer needs and telemarketing needs and promotional needs and the securities issues, which is the industry we grew out of, but we're a company that has developed the technology and the application to actually deal with the do-not-call list automatically and virtually at no cost.

So, we have approached the problem, the conflict that exists that you are trying to address in the rulemaking with how to actually implement what it is that we have done around this table before, for you survivors, and that which we'll do around this table for

the current survivors.

So, we have tackled the issue of how to implement what you want done, and we'll be prepared to discuss that throughout the day.

MS. HARRINGTON: Okay, thank you, David.

Jason?

MR. CATLETT: Thanks, Eileen.

I'm Jason Catlett. I'm the president of Junkbusters. We maintain a website which is popularly used by consumers in the telemarketing arena. We have an anti-telemarketing script, which is just a list of simple questions that consumers can go through when they get a telemarketing call that gets them on the do-not-call list of both the company in whose name the call was made and the teleservices bureau that was making the call.

It also helps probe if the call was illegal under a number of criteria, and many consumers find that useful; however, we do get a large number of complaints that telemarketers simply hang up as soon as they're in a situation where the consumer seems to be asserting any kind of right or starts asking questions instead of sort of being told what to do.

So, I would like to make as my main point to the 1991 Telephone Consumer Protection Act where Congress

anticipated that a nationally -- that a national do-not-call list would be necessary, and I think experience has certainly shown that certain companies specifically view do-not-call lists as being a failure, and simple implementation of this has failed, and given that the DMA yesterday launched a EMPS -- an internet-based service where you could register names for not getting junk e-mail, which I think actually was not a good idea, but the technology has got to the point where a national do-not-call list would be a simple and economical thing to implement, and we should really look at that.

MS. HARRINGTON: Thank you, Jason.

Kathleen?

MS. TORLUCCI: Thank you, Eileen. My name is Kathy Torlucci, and I represent a company called KTW Consulting, and we specialize in providing consulting services to -- within the call center environment as well as clients who would like to utilize telemarketing as a channel of distribution for their sales and products.

Our interest today is to really ensure consumer privacy rights and the consumer awareness of the Telemarketing Sales Rule, as well as to ensure that the telemarketing industry is in compliance with the rule.

Thank you very much.

MS. HARRINGTON: Thank you.

Mike?

MR. PASHBY: Thank you, Eileen.

Good morning, I'm Michael Pashby, and I'm the executive vice president of consumer marketing for Magazine Publishers of America. MPA represents more than 200 of the leading consumer magazine companies, and our members publish over 1200 magazines, which are, once again, household names in this country, and indeed those brand names are those companies' most important assets, so they don't wish to have those brand names cellared.

Telemarketing is a key sales tool for most of those magazines, and our interest here is to ensure the consumers do have the ability to choose whether they want telemarketing calls, but we strongly believe that that should be on a company-by-company basis rather than a blanket prohibition.

Thank you.

MS. HARRINGTON: Thank you.

Russ?

MR. SMITH: My name is Russ Smith, and I operate the website Consumer.net, and essentially I started my website pursuing the Telephone Consumer Protection Act. It's a law that allows consumers to take things into

their own hands and sue telemarketers directly. So, I've collected thousands and thousands of dollars, mostly from the major telemarketers, and I'm here to discuss the private right of action that the consumers would have in these situations.

MS. HARRINGTON: Thank you.

Bill?

MR. GILLES: Yes, I'm Bill Gilles, a commissioner from the State of Washington, a public service commissioner from the State of Washington. I'm here representing the National Association and the State Regulatory Utility Commissioners, we have agencies in every state.

Our agencies take complaints directly from consumers on a variety of telecommunications and other utility issues, and in general, telephone solicitation concerns represent a very significant number of the complaints that we do receive from consumers, although there's a wide variation among states -- state utility commissions in their particular jurisdiction. In my state, we generally just refer off the complaints to the Attorney General's office for enforcement action. I am told by our -- by our staff that our particular fact sheet that goes to consumers describing their rights to deal with telephone solicitation is our most popular

fact sheet. So, it's a very significant concern among the state commissions.

MS. HARRINGTON: Thank you.

Jeff?

MR. KRAMER: Hi, my name is Jeff Kramer. I'm a legislative rep in federal affairs at AARP. A lot of our members are household names, as well, your parents, your grandparents, and perhaps yourself.

Anyway, the reason we're here today is, you know, we feel that the do-not-call provision is a very important provision of the Telemarketing Sales Rule. We would also like to say -- some of the people mentioned that awareness increased. We've found a lot of our members really are not aware that the do-not-call provision is there, and we would also like to see it made easier for people to get on a do-not-call list, perhaps a national do-not-call list, but something that makes it easier for consumers to get on the do-not-call list.

MS. HARRINGTON: Thank you, and thank all of you, good job. We're only three minutes behind schedule. We'll make it up by cutting you off selectively during the next portion of the workshop.

**ACCESS: MARKETERS' DESIRE TO REACH CONSUMERS
AND THE METHODS THEY USE**

MS. HARRINGTON: One thing that I would note is that we have around the table those who have identified themselves as survivors of the first rulemaking, and then we have some new organizations and interests represented, and I would characterize those who are new to this discussion as technologists, entrepreneurs and privacy advocates, and the entrepreneurs seem to be growing their businesses around consumer concerns about privacy, and that's just an interesting thing to note, I think, about who we have seated at the table today who we didn't have five years ago.

It's particularly interesting that we have some technologists, because the first segment of our discussion this morning in some measure focuses on technology, and let me begin by asking the first question. What has changed in five years about the technology that those in the telemarketing business are using to reach customers? What has changed about the technology?

Marc, did you -- remember, if you want to speak, put your name tag up and identify yourself for the record, please.

Marc?

MR. BEAUCHAMP: I can say based on what I heard at this panel discussion yesterday is that the internet has emerged as an alternative distribution mechanism for telemarketers. In the securities areas especially, it used to be you had big boiler rooms, people making hundreds of thousands of calls every day trying to find a few suckers, a very expensive, very inefficient way of selling securities. Actions by regulators to break up some of these big boiler rooms put people in prison. Some of these promoters have moved on to the internet and also infomercials, coupon books, and the trick now seems to be to get the victims to call them as opposed to them calling the victim.

Telemarketing has also gone global, so it's just as easy today with falling international phone rates to call somebody in the United States from Costa Mesa as it is from Costa Rica. We have people selling securities -- big problems with securities and telemarketing operations in Canada. Canada is a major exporter now of telemarketing fraud. So, those are two things that I learned yesterday.

MS. HARRINGTON: Thank you, Marc.

David?

MR. MORTMAN: One of the --

MS. HARRINGTON: Would you identify yourself for

the stenographer?

MR. MORTMAN: I'm sorry, executive vice president --

MS. HARRINGTON: Name and then organization, I'm sorry.

MR. MORTMAN: David Mortman, executive vice president, Callcompliance.

What we have recognized in the last five years is the increased methodology of call centers, the growth of call centers, the predictive dialing, the dialing platforms, those things that allow calls to be made in almost unlimited numbers on a queue basis, and what your agenda has done on this first issue is really identify the increased efficiencies and methodology that you're looking for comment on with regard to inbound calls. How is a call center better operated today than it was five years ago, and therefore, how is it making more and better and more efficient calls?

What we've tried to focus on is how to allow those calls to be made but be able to create a system that automatically blocks them at virtually no cost to the telemarketer, respecting the consumers' desires. And so what we've done is we've developed technology, actually sits on a carrier's switch, so that there is no hardware or software for a telemarketer. We basically

become their outsourcing capability, and the database can incorporate all of the state-mandated lists as well as the telemarketers' lists.

In using the internet, as Marc points out, the telemarketer can add or delete off the internet. They control their own list, and there's firewalls obviously that protect each marketer's database. So, we believe that the focus has not been on technology that protects consumers in a generic way, that permits telemarketers to feel that they can continue to use the wires to sell. I mean, after all, the direct marketing industry has increased to generate sales in excess of a trillion dollars, maybe a trillion and a half dollars. Fifty percent of that, arguably, is from the telephone side of the equation, and we've done that, and we've had great success in meeting with call centers and a great more -- especially in the securities industry, where the intent to comply may exist, but the ability to comply we've found doesn't.

I would like to make one other point. Our research of the market does show that consumer awareness is not as great as it should be.

MS. HARRINGTON: About their rights under these two laws?

MR. MORTMAN: Exactly, and there was the '94

House committee report that indicated what their study showed, their analysis, but I would venture to say that if a similar analysis was done today, the percentages would not be measurably different. And what we find is that call centers who do not know that fines and penalties exist, both on a state and a national level, or they know that they exist but they don't know that their competitors have been fined or that there is knowledge of the enforcement procedure, they're not persuaded that they have to do anything. And the economics that we've heard around the table, therefore, don't work to compel compliance.

MS. HARRINGTON: Would you be willing to share your research with us so that we can put it on the record?

MR. MORTMAN: Absolutely.

MS. HARRINGTON: Okay, thank you.

MR. MORTMAN: And I had actually intended to follow up in a 30-day period with something in writing that would help deal with that point.

MS. HARRINGTON: That would be helpful.

In addition, you mentioned early in your remarks the use of predictive dialers and other platforms. Could you just take a minute to explain how those technologies work?

MR. MORTMAN: Well, basically they are programs of phone numbers that automatically queue a caller. They are dialed automatically. They have different interactions, different trees involved with them, but what they are intended to do is automatically place calls to households so that a human person, if it's part of that process, ultimately takes a real call, and there is no downtime in a marketer's telephone ability.

One of the measuring devices that's now become a pure method in call centers is the percentage of calls that are completed, the average holding times that they hold, their incentive in a way now that requires massive calling. Different call centers emphasize different things. Service is now the banner for call centers, but they vary across the board.

Some reward their marketers on the actual volume of calls that they can make. Others --

MS. HARRINGTON: Completed calls or -- or that the machine places?

MR. MORTMAN: Completed calls, which is why one of the comments was that there's tremendous hang-ups. Once a telemarketer feels resistance, the phone is down and he is on to another call, whether he's self-calling or it's on a predictive, and they're queued up to take the next call.

MS. HARRINGTON: And are you suggesting that incentives have shifted away from sales to completed calls in call centers or --

MR. MORTMAN: I think they -- I think they equate sales to completed calls, and some of the more sophisticated measuring devices, the software devices that others can probably speak to emphasize different measuring and incentive programs, but clearly the calls have to be made, the calls have to be completed, and the time involved for a caller to sit and take information probably works against their incentive measurement devices.

MS. HARRINGTON: Okay, thank you, David.

Jason?

MR. CATLETT: Thanks, Eileen.

On the question of technology, that's a subject dear to my heart, I'm a technologist, majored in computer science, but I'd like to draw the meeting's attention to some recent developments, one reported December 19 on page 1 of The Washington Post in an article by Robert O'Hara which is about how a company called Axiom is developing a large database of how specific numbers behave. It's harvesting unlisted numbers by use of the automatic number identification on 800 numbers, and I commend that article to your

attention.

Axiom also sells information about what time of day a particular consumer is likely to pick up the phone, and the amount of data that's being gathered about people's telephone behavior is itself a violation of privacy, independent of the telephone call that is subsequently made.

So, I think -- I hope that that should be a topic of discussion, but I don't want to lose the topic of the abandoned call issue, which is -- causes a great deal of distress to consumers, and I hope that other people at this table will pick up that issue.

MS. HARRINGTON: Thank you.

Russ?

MR. SMITH: Yeah, Russ Smith of Consumer.net, and I'd just like to comment that it's interesting that the telemarketers are having everything computerized and calling and so forth, but when you place an order, they --

MS. HARRINGTON: The technology at the FTC has not improved.

MR. SMITH: -- when you order a product, it's often being delivered in one or two days, but when you make your do-not-call request, you're often told it takes months, and I don't understand what happens to the

link in technology between those two --

MS. HARRINGTON: Well, that's a good question. Let's put that question out to some of those who -- Mike, do you have -- it's unfair, but your card is up. The question is why does it take, you know, minutes to ship an order and months to get on a do-not-call list?

MR. PASHBY: It shouldn't take months to get on a do-not-call list.

MS. HARRINGTON: How long should it take? What's reasonable?

MR. PASHBY: Probably 30 days. I mean, the -- there are certain issues which would be when was the -- when was the list pulled for the marketing campaign, and this was clearly an issue that we had when we talked about sweepstakes last year. It could indeed be three months if one has pulled the list for a marketing campaign in advance, which one generally does, but one can get one's self off a list within 30 days. That's not the issue. It's when one's pulled the list for the campaign.

MS. HARRINGTON: Does -- shouldn't the internet cut that time, business-to-business applications? I mean, shouldn't -- with the wide availability of internet in the business setting, shouldn't -- shouldn't it take a lot less time?

MR. PASHBY: I don't think that the internet really has much to do with that. What we're talking about is pulling a number of different lists, running those lists against one's own house list. It's a long process, generally a long process.

MS. HARRINGTON: Okay. Did you -- you had your card up.

MR. PASHBY: Yes, I just wanted to say one thing about predictive dialers, which I think has been mentioned around this table, and that is the supposed dead air, two to five seconds possibly, where there is just blank time on that call when the consumer picks up, which I think everyone gets rather upset about.

However, from the industry standpoint, we would much prefer to have a recording on there saying, "Please wait a moment," to make the consumer feel more comfortable. Unfortunately, we can't do that, because we can't have a recording start off a telephone conversation.

That in itself would make the consumer feel more comfortable when they are receiving a two-second or five-second downtime, as the predictive dialer is checking to see if there is an answering machine on that telephone line.

MS. HARRINGTON: Okay.

Bob and then Bob.

MR. BULMASH: Bob Bulmash, Private Citizen, Incorporated.

We were discussing how long it takes an organization to implement a do-not-call request.

MS. HARRINGTON: Excuse me, but could you use one of the microphones? Thanks.

MR. BULMASH: Yes, I'm sorry, Bob Bulmash, Private Citizen.

We were discussing how long it takes or should take to implement a do-not-call request, and some might feel that it's appropriate for 30 days to be a reasonable time period to get you off of a call list and upon a do-not-call list. The Telephone Consumer Protection Act of 1991 is clear. A do-not-call request must be added to the do-not-call list at the time the request is made. Any telemarketing calls, sales solicitation calls, to that resident subsequent to their being placed on a do-not-call list is a violation of federal law. If you have to be on the list at the time the request is made, 30 days is 30 days too long to wait for an implementation of the do-not-call request.

Also, I wanted to mention about predictive dialers and the delay in the answering machine and the fact that it calls people. I am going to visit that a

little bit more fully in the future during this discussion, but to be called from the shower, to be called from caring for three children, to be called when you work nights and sleep days, to pick up the phone and hear dead air, to pick up the phone and hear a telemarketer, indeed, to pick up the phone and hear somebody say, recorded, "Please wait while we become ready to talk to you after we pulled you from what you're doing in the privacy of your home, as if you're nothing more than a Pavlovian dog responding to the ring of a bell."

And I think that's strong words, but that's what it is, conditioned reaction, you hear a ring. Who died? You pick up the phone. Then you hear a recording, "Please wait, we're not ready to talk to you, although we've required you to come to the phone." In my view, that's somewhat sociopathic. This is where we raise our families. This is not a used car lot. This is not a clothing boutique. There is some sanctity someplace in this world for our rights. And if it doesn't exist in our homes, it doesn't exist.

Thank you.

MS. HARRINGTON: Thank you, Bob.

Bob?

MR. SHERMAN: Well, just -- Bob Sherman on

behalf of the Direct Marketing Association.

We feel -- just a brief comment, I know we will get into this later -- we feel that the company-specific do-not-call lists provides the ultimate consumer choice. Consumers can pick and choose who they want to hear from and who they don't want to hear from, and as we get into the actual do-not-call provision, that will be our position, that there can be nothing better to empower a consumer with choice than literally to give him or her the choice of who to hear from and who not to hear from, as distinct from a blanket do-not-call, go/no go system.

I wanted to make a brief comment about predictive dialers. The Direct Marketing Association -- this is a -- this is a -- I don't know how new the technology is. I know it is -- its use has grown dramatically in the last year or two. The Direct Marketing Association does have guidelines on the use -- on the proper use of predictive dialers. We encourage everybody to set the abandonment rate as close to zero as practical.

Now, we recognize if you set it at zero, you've done away with predictive dialers, and we don't want to kill a growing technology that has some very valuable uses. On the other hand, we set an absolute ceiling of

5 percent with a promise to the industry to review that maximum on a regular basis, and I believe the review is coming up now, and although I won't predict pardon -- the pun -- what will happen, I suspect it can only go down. The industry recognizes the annoyance factor of dead air, and we do want to do something about it while at the same time preserving this very valuable technology.

We felt 5 percent on any campaign is the absolute maximum, and as I say, it will be reviewed with the potential of being lowered.

MS. HARRINGTON: Bob, let me ask you a question about the first point you made, that company-specific lists are the ultimate vehicle for consumer choice.

Are there different technologies available today that could make companies -- that could make it possible for companies to honor consumers' requests much more quickly?

MR. SHERMAN: Well, I'm not the expert at that, so I'm going to have to disclaim the technological expertise, but there are a number of factors beyond technology that come into play. Whether the -- whether the request was made directly to the company or through an agency, whether the company's decentralized and has offices all over the country and you have got to get

that information into a centralized computer and then back out again.

And so the short answer to you is I would think that technology has helped. I know, by analogy, there was a recent federal statute in a different area that is allowing 60 days for removal of names who sign up on that list, that's in the sweepstakes area, Postal Service's new law. Sixty days is too long; 30 days may be reasonable. I don't believe realtime, same day, is what the statute meant. I do believe that as quickly as commercially possible is what everybody should strive for, but I don't know the answer to the question that --

MS. HARRINGTON: No, and we would be interested in any information that any of the participants or anyone else has about what is technologically possible and feasible in terms of timing.

David and then Kathy.

MR. MORTMAN: Let me just make three quick points, one with regard to technology. Obviously -- I'm sorry, David Mortman on behalf of Callcompliance. I apologize.

In regard to technology, technology exists. I've described it before. If you -- if a consumer opts out of a list today and it's input by 4:00 today, our system will have them off by tomorrow morning. So,

technology is available, it does exist, it's working, and it's commercially viable.

Second, with regard to multiple offices, et cetera, we cover multiple offices or our system does. So, that same caller who goes in today is off every office of that telemarketer tomorrow.

Third, there are political issues that have to be understood within this forum. A caller who makes a call to a consumer who wants to opt out of a company list, the mindset of that marketer, however good or bad they are, is that that consumer was called at a bad moment and they're going to change their mind. So, if we have more time involved to take them off the list, we'll get them back, or at least we have 30 or 60 days to make the call.

The reality is that technology has advanced appreciably since the law was enacted. Realtime capability exists, and one has to understand the context within which one would claim extended periods are required to get someone off the list.

MS. HARRINGTON: How much does realtime capability cost?

MR. MORTMAN: In -- I'm sorry for the infomercial, but in regard to our system, it's virtually at no cost, because it comes in the carrier's rate.

It's viewed as a value-added product.

MS. HARRINGTON: Well, one of the questions that we've asked in the agenda is -- concerns costs and benefits, the costs and benefits imposed by the current regulation, and I guess implicitly we're interested in costs and benefits that could be associated with changes to the rule if changes were made. So, that's something I'd like you to keep -- all of the participants to keep in mind.

David?

MR. MORTMAN: I can respond very quickly to that. The telemarketing industry is spending millions of dollars on methodology and the ability to increase the efficiency of call making, internal systems, software, predictive dialing, dialing platforms, a whole host of products. Virtually -- virtually little, in comparison, is being spent on how to think through do-not-call compliance. There is technology available -- it happens to be available from my company, but it does exist -- in which the product is valued in a carrier's rate, so that if you're paying X cents a minute for long distance coverage, theoretically, our product is in that rate and competitive with other carriers who may not have that product.

MS. HARRINGTON: So, you are selling your

product through the carrier?

MR. MORTMAN: Correct, correct, because it's a systemwide system. It sits out on a switch.

MS. HARRINGTON: Um-hum.

MR. MORTMAN: And so it's part of a phone process.

Now, if you recognize that phone companies are making money today by charging consumers for blocking services, right, they're offering these at \$4 a month, \$5 a month, whatever that charge is, it's an outrageous cost really when you think about it. We're offering it through a carrier on the other side for -- as a value-added benefit for that business to be part of that carrier's network.

MS. HARRINGTON: Okay.

Linda? I'm sorry, Kathy and then Linda.

MS. TORLUCCI: Thank you, Kathy Torlucci, KTW Consulting, just two things.

Regarding the predictive dialer, the predictive dialer actually is -- projects, based on the number of representatives that are assigned to a certain campaign, so it's actually continuing to project when the next call will be taken based on algorithms and primary settings, just so that people understand that in layman's terms.

Regarding the do-not-call request by a consumer, if a customer requests not to be called for XYZ Company, the call centers are to disposition that record as of the time of that call. Therefore, within that certain client campaign, that customer should never be called again. So, talking about a realtime environment, that's as close as you'll get.

MS. HARRINGTON: Okay, thank you.

A question from Keith.

MR. ANDERSON: I'm Keith Anderson.

David, you said your service is provided by the long distance carrier, but I presume there's a premium for obtaining that service.

MR. MORTMAN: Depending on the carrier's marketing motivation. Right now, the -- our product is being sold as a value-add without premium. It's being viewed as a carrier for their market share or retention capability because of the tremendous competition in long distance rates and whatnot, so that as a marketing decision, the decision today is that that product is not being sold at a premium and that you can get a competitive rate, as with any other carrier, except you also get this value-added product. So --

MR. ANDERSON: I'm confused. You're giving your product away for free?

MR. MORTMAN: No, no, it's not being given away for free. It's being given away for two issues. One is that it's a market share that that carrier may not have now and wants. After all, these are tremendous users of phone services. We're talking about accounts that are in excess of \$5,000-\$10,000 a month going to a million dollars a month. So, for a carrier it's an extraordinarily attractive piece of business.

Secondly, with the competition in long distance, they view a company on the system as one that will retain their services. So, at the moment, as this is a new product, and it's actually been available only for the last six months, that's how the marketing has proceeded. There are administrative charges, for example, that we're entitled to charge on that contract, which we have waived at least for the first year as the product is being implemented.

MR. ANDERSON: Okay, thanks.

MS. HARRINGTON: Thank you.

Linda?

MS. GOLDSTEIN: Yeah, I just wanted to make --

MS. HARRINGTON: Would you identify yourself?

MS. GOLDSTEIN: I'm sorry, Linda Goldstein, Promotion Marketing Association, just two comments, one really a comment and the other really perhaps a

clarification.

I just wanted to address the comment that was made that one of the changes over the past few years has been an emphasis on number of calls rather than on number of properly completed calls, and I don't think at least from the vantage point of our members that that would be fairly representative of the industry, at least amongst our members, and I have had occasion to review a number of their call center guidelines, but the premium is placed on proper adherence to scripts, proper procedures being followed, and in many cases there is disincentive and penalties in the event that a sale is completed that cannot be verified or that does not appear to have been done through appropriate means. So, I don't know that it would be fairly representative of the industry today to say that the emphasis has shifted from quality and verifiability of the sale to sheer quantity of calls being placed.

MS. HARRINGTON: There is no incentive for the marketers working for your members for calls placed?

MS. GOLDSTEIN: There can be, but in many instances I've seen the incentive that -- a disincentive if that call -- if that sale cannot be verified or if there are subsequent complaints.

MS. HARRINGTON: Right, if it can't be verified,

then there is a sanction, but there are front-end incentives for completing calls?

MS. GOLDSTEIN: For completing the call to a sale but not simply for getting through, which I -- which was what I understood David to be suggesting.

MS. HARRINGTON: Okay.

MS. GOLDSTEIN: The second question I had really -- I think a number of us had about the technology you're describing is it doesn't sound like that could be company specific. Is that --

MR. MORTMAN: No, it's definitely company specific -- if I may?

MS. HARRINGTON: Sure.

MR. MORTMAN: It's definitely company specific. In fact, this -- I'm glad you asked the question. It does two things.

One is that it's a database that can include and does include all of the state-mandated lists. So, right now, of the five states that have mandated lists and four more that will be up by June, you are talking about an existing aggregation of names that would run about 300,000 consumers. Our database includes those and is made available to the telemarketer together with the telemarketer's own list.

The DMA has a telephone preference list, for

example. We would -- we could incorporate that list in our service, as well, because our database has an unlimited capability. That's the difference between what exists today in terms of limiting -- a limitation on what internally a company can do and what we can do.

MS. HARRINGTON: Tim?

MR. PHILLIPS: Consumer election equals consumer choice. I think that the do-not-call list or company-specific -- company-specific lists have been a good idea. Certainly they haven't gone far enough. I think any consumer -- take me. I could spend the rest of my life getting on each one of these lists, and I am still going to get calls. I think there are just too many companies involved, there are too many telemarketers, but specifically too many companies who are using telemarketing.

I think you have to give the consumer the choice to elect, and if they do, the registry itself is going to be a good idea. At whatever level you choose to do it, there's several states who have started, and I think certainly consumers need it.

MS. HARRINGTON: Jason?

MR. CATLETT: Thanks, I'm Jason Catlett from Junkbusters.

Could I add on the question of consumer choice,

why don't we go for an opt-in system, where consumers choose to be on a list where they elect to receive telemarketing calls? I think that would be a fine alternative to consider.

But let me now go on to try to tie in some of David's points and point out that companies are not complying with do-not-call requests, and they are certainly not doing it fast enough in a number of cases, and we have heard David tell us -- and my technological experience also bears that out -- that near realtime compliance with do-not-call requests is eminently doable, it's technologically feasible. David told us it's immediately available to --

MS. HARRINGTON: What does it cost, in your view?

MR. CATLETT: It's part of building the infrastructure of your system, and to retrofit that on a system that hasn't had it may have some costs, but that's a necessary and appropriate part of building a telemarketing system, that you comply with the law, and we've heard that companies are simply ignoring that because processing a do-not-call request is not revenue-producing. It goes in the wrong direction for their economic incentives.

So, in that environment, surely the only sane

response by regulators is to find those companies and to make them pay for failure to comply with do-not-call requests, and that is not happening, and I think we can only conclude that that's a failure of the duty on the part of regulators to bring those economic incentives in line with -- to get the companies to comply with the law.

MS. HARRINGTON: Thank you, Jason.

Let me remind you that if you want to speak, your card should be up, and if you have forgotten to take it down, please do so so I don't call on you again.

Mallory?

MR. DUNCAN: Well, I assume at this point we've moved into the question about costs and benefits, so I'll --

MS. HARRINGTON: I think all of the questions are on the table. We're interested in technology, in procedures to increase efficiencies on the part of the marketers, costs and benefits in the current regime, any estimate of costs and benefits from possible changes.

MR. DUNCAN: Sure. Well, you know, from the companies I've spoken with, certainly there is a benefit to the current regime in terms of do not call. From the companies' perspective, it's quite logical that it

allows them, once they know who doesn't want to receive calls from that particular company, to direct their attention to other customers of theirs. So, there is, in fact, an economic benefit. You're not wasting those calls in trying to reach customers who may want to work with you in other respects but don't want to work with you over the phone.

However, in terms of the issue of timing, it's actually much more complicated than I think it's been set forth here. Clearly there's a cost component. Also, the increased interest in privacy over the last few years has meant -- and I think it was pointed out -- that a number of states have developed their own do-not-call lists. Those tend to be broad, generic lists.

So, for example, in Florida, there is a list out there that anyone can sign onto, and the list is published quarterly. Well, if you happen to hit it at the wrong time, obviously a customer who signs up for the Florida list -- and I think they pay \$10 a year in order to be on that list -- it may not be picked up by our members' computers until the next quarter rolls around, so the consumer's upset they haven't -- their name's not on in 30 days and it may take as much as 180 days.

MS. HARRINGTON: Does the law in Florida require it be done in 30 days?

MR. DUNCAN: No, the law in Florida simply requires a quarterly publishing of the list.

MS. HARRINGTON: So implicitly there's a grace period.

MR. DUNCAN: That's right, and then once you have the information on the list, typically the way a company works is they take the information and they are going to do a telemarketing campaign. They screen the names off their master list against the names on the various forms of do-not-call lists, whether it's from Florida or Oregon or anyplace else, and that's what they send out, and it costs money to do that screening.

A large company might have 20 million names on their list potentially, and let's say it's a couple of pennies for each run through on a screen. So, you're talking about a half million dollars in order to do that. Now, you are not going to take a half million list, use it for one day, throw it away and say, Okay, I have got to screen the entire list again tomorrow. So, you are pulling in these various lists.

Usually they give a life to that list. That life might be 30 or 60 days or so, at which point they run the next campaign, they'll pay another, say, half

million dollars to screen that.

The gentleman at the end of the table pointed out the cost of retrofitting. This is all done because that's the way the systems were developed over the last 20 years. Of course they could spend hundreds of millions of dollars to completely retrofit their systems, but that again is a cost factor to consider.

MS. HARRINGTON: Thanks, Mallory.

Marc?

MR. BEAUCHAMP: Okay, I just -- I have a question. What -- does anyone have a handle on what percentage of consumers out there avail themselves of do-not-call lists? Because in the brokerage industry, for example, we have got over 6000 firms, not every one cold calls, but many of them do, and so when Tim says you'd spend the better part of your life just informing firms you don't want to be cold called, the question I have -- and again, speaking for myself and not for state regulators or my association, but it's how do you educate people that these lists exist?

I'd use the media, but the media is sporadic and a transitory impression. I would argue that maybe it would be terrific if the firms themselves, when accounts were opened, said, Look, these do-not-call provisions exist, you have a right or your interest should be to

think about whether or not you want to check off this box, either when the account is opened or maybe on a monthly or annual account statement, make it prominently displayed so that there's more or we're relying on more than just the news media to get this message out.

MS. HARRINGTON: Okay.

I think Bob has an answer to your question.

MR. SHERMAN: On behalf of the Direct Marketing Association, our best information is that for those states that have state do-not-call lists, they all approximate 1 percent of the residents of that state. The highest is Oregon, which is about 2 percent, but I don't think any other state exceeds 1 or 1-point-something percent.

MS. HARRINGTON: Do you have any information from your members about how many -- what percentage of their potential customers ask to be placed on company-specific do-not-call lists? Anyone have any information about that?

Joyce, do you have information on that? Could you use the microphone?

MS. BRUNDAGE: I'm speaking now of nonprofit organizations, but with our company we do use the DMA preference list and then all of the state lists, and I know in looking at data as recently as yesterday, we

found that 5 percent of the names with phone numbers were on those lists.

MS. HARRINGTON: Thank you.

Russ?

MR. SMITH: Yes, just a couple quick comments on the predictive dialers and how they work. When you put a number on a do-not-call list, it goes into the computer and the predictive dialer and blocks it from being called out. So, you never have to touch the initial list, and it doesn't matter if you pulled that list 30, 60 or ten months ago, you are going to block it on the outbound, and I believe that's how the other service works.

The other issue with predictive dialers, when they do hang up on you, the Federal Trade Commission rule says that when someone calls you with a call or a message, they have to give their identification and the name of the company they represent and everything, so I would ask the telemarketing industry to explain how they are going to do that when they hang up on you, and they tell you, Well, that call doesn't count because we hung up on you, even though the rules say that when they call you, that's making your phone ring.

And the other issue is the cost of honoring the do-not-call list. From my experience as being a

consumer and the response I get from these companies, it's normally cheaper to call everyone and just -- just try and brush off the complaints rather than to go through a process of putting people on a list.

MS. HARRINGTON: Wanda?

MS. DELAPLANE: Wanda Delaplane from National Association of Attorneys General.

In response to the question about the percentage of consumers who are on the call list, from what we hear at the state level, that being on the call -- on a do-not-call list does not equate with not continuing to get the calls. We have a lot of consumers who indicate that they have jumped through every hoop that they can find in order to stop receiving calls --

MS. HARRINGTON: For specific companies?

MS. DELAPLANE: Correct, for specific companies and continued to receive those calls, so that the noncompliance by the individual companies continued to be a problem.

MS. HARRINGTON: Okay.

Gordon?

MR. MCKENNA: Well, it sounds like this is a weighted response to some of the questions. This is Gordon McKenna, American Teleservices Association.

The next day on a do-not-call list is a little

unrealistic for our industry. If you're an in-house operation, you can scrub it against your list the next day, but your response code for an in-house operation should be a do-not-call, and you would go into a do-not-call list, and that person wouldn't be called again.

On an outsourcing --

MS. HARRINGTON: Gordon, if same-day or next-day may not be doable, what is?

MR. MCKENNA: Well, let me go a little further, if you don't mind?

MS. HARRINGTON: Sure.

MR. MCKENNA: On an outsourcing where we have an outsource company that is making calls on behalf of a household name company, the next day that information is fed back to the home company, and that company then puts it on their do-not-call list. Well, keep in mind, you've got a number of people, a number of system issues on downloading information, uploading information, and it does take some time. And that information, again, is fed only from that company, then it goes back to their lead source or house file that is being compiled by an outside list company. So, we have got at least three, maybe even four companies that have to touch that name, and it does take some time to get in line for all of

that touching. So, if we would keep that in mind, that would be helpful.

It -- and I do want to point out that the do-not-call list has value, it does help the consumer, it does help those that are in our business. The number of calls, I don't know of any in our industry that get paid for the number of calls they make. If you're an outsource -- and I'll deal with the outsourcing, because I think that may be kind of what the issue is on the outsourcing.

We as an outsourcing industry act like accounting firms, get paid for a labor hour, and you're managed by the in-house operation on whether or not there's value in what you're doing. That doesn't mean how many phone calls you make. It means that you're complying with all of the regulations, that you're making a proper presentation to the consumer. Very few companies that I can think of that get paid by how many calls they make.

MS. HARRINGTON: So, they get paid by the hour, by the --

MR. MCKENNA: Most companies get paid just like an accounting firm does, by the hour.

MS. HARRINGTON: Well -- no matter how many calls you make?

MR. MCKENNA: Well, that's the part of management by the in-house company. For instance, let's say it's ABC Company, and ABC says I'd like TM Company to make a number of phone calls for me, and then what I'm going to do is manage that on a daily basis and make sure that I'm getting my bang for the buck, so to speak, make sure that I'm getting what I paid for.

MS. HARRINGTON: Well, does ABC pay more to TM Company to have 5 million calls placed than it does to have 1 million calls placed?

MR. MCKENNA: No.

MS. HARRINGTON: So, how does it work?

MR. MCKENNA: Well, what it works for is the value -- I -- it's -- basically it's called value for account acquisition. Now, I know that if ABC Company says I can spend \$40 for a new account, so I know what kind of benchmarks, up and down, I have to have in return for the amount of money that I'm paying the TM Company, and that's how they manage it. If it's unprofitable, then they just don't call anymore or they'll go to another firm that makes more sense that they can get more return for their dollar.

MR. ANDERSON: So, they're paying so much -- so, the contract is I'll pay you \$40 per sale?

MR. MCKENNA: No, no.

MR. ANDERSON: Something like that?

MR. MCKENNA: The contract is for -- that we will pay you so many dollars per hour of telephone work. It may be contrary to what most people think, that we get paid on a per-call basis, and that is not the case. We know that over the last five years that the costs for our customers, the in-house operations, are going up. It's costing more because of all the regulations that you have to fulfill.

Keep in mind, not only does the FTC, the FCC, have regulations, but if you have a bank client, the bank has regulations; if you have a telecommunications company, they have regulations. We have a number of regulations that we have to live up with -- live up to.

I would like to point out about the hang-ups, I'm sitting next to the right lady to talk about on the hang-ups, you want to --

MS. HARRINGTON: I don't think she has a lot of them.

MR. MCKENNA: -- you want to stop hang-ups? Put some money behind legislation we already have in the states. Those are fraudulent calls for the most part. That's where the issues are. If you are compliant with TPC, there's no way you can be hanging up. You're committing fraudulent acts. You're violating laws that

are already on the books.

Now, we look at more regulations, and if you would just put some money behind existing laws that are already out there, you can prevent those hang-ups, because that is against the rules of playing the game.

I also would like to point out that we are focused on what I would call the downside of the telemarketing process. Now, you all -- most of you here represent consumers. Here's what I'd like to point out to you, that in representing your consumers, there was over 100 million transactions done in 1998 by the telephone. Represent your consumers. People in businesses and at home want the convenience of being able to order and have choices to order through the telephone, and I'll bet you here, at this table, most of you have ordered through the telephone.

MR. ANDERSON: How many of those hundred million are on outbound calls? I mean, that's what we're talking about. I mean, we're not talking about when I call Land's End.

MR. MCKENNA: I don't have that number for you, and I understand what you're saying, that it is more convenient to do an 800 number than it is to receive an outbound call, but the marketplace will take care of itself. If consumers don't want to buy, the outbound

process will go away.

MS. HARRINGTON: Okay.

MR. MCKENNA: I have one more, one more item.

The outsourcing industry is over a \$10 billion industry. We have approximately 15 public companies in our industry. This is a \$90 billion industry. This isn't cupcakes and Susie making phone calls at home. This is a big industry. We generated in sales and services over \$350 billion in our industry in 1998.

Thank you.

MS. HARRINGTON: Thank you, Gordon.

Is -- I have an announcement. Is Christie Grimes here? Is there somebody here named -- would you see the woman at the door? We have a message for you. Thanks.

Bill?

MR. GILLES: Bill Gilles from the National Association of Regulatory Utility Commissioners.

This is on the topic of cost-benefit from a different angle, I suppose. Jason had made the comment that part of the solution are regulators applying appropriate remedies, and that stimulated a thought of we also need to be thinking about the cost of enforcement, as well, as not just the cost of technology to prevent the problem, and individual complaints of

this type are difficult to enforce and build the appropriate record to apply action, and to the extent the rule could be made easier to apply, I think it's useful, but in addition, the individual -- the cost to the individual of bringing a complaint is often pretty high.

They don't necessarily know where to go or what to do, and it's a hassle in their life if they ask to be taken off a list and are still getting calls, to then take the next step and actually file an appropriate complaint is something that -- from the individual's standpoint, it is costly. So, to the extent the rule can be made for user friendly, I think that helps, as well.

MS. HARRINGTON: And I appreciate those remarks, Bill, but let me remind you that we're focused during this session of the discussion on the need and the desire of the marketers to reach their customers. We're asking questions about how technology has changed, what are the costs and benefits of the current regulatory regime. We -- the next segment is going to look at consumers' concerns.

So, this is really an opportunity to develop a record on those questions that are in this segment of the agenda.

Bob?

MR. BULMASH: Thank you, Bob Bulmash, Private Citizen.

One thing that we're not addressing I think properly is that there's a human factor which is also connected to the technology. Telemarketing for the telemarketer, outbound telemarketing, is not an easy job. It's a difficult job. It's very seldom a career. The average life span of a telemarketer is around three months.

MS. HARRINGTON: That is the employment span?

MR. BULMASH: Right.

MS. HARRINGTON: Hopefully they live on to do other things.

MR. BULMASH: What did I say, life span?

MS. HARRINGTON: Yeah.

MR. BULMASH: All right, they're safe when they walk out.

The human factor also includes the nature of what a telemarketer's trained to accept as a do-not-call request. I have some do-not-call policies from major, legitimate, brand name firms back at the office, and in those do-not-call policies or do-not-call instructions, training manuals, to the telemarketers, the telemarketers are trained that if someone says to the

telemarketer upon being called, "These calls drive me nuts," that that will not be seen as a do-not-call request.

In other words, many major, recognized, legitimate firms that make telemarketing calls are unwilling to respond legally, within the framework of the regulations and the legislation, to a reasonable do-not-call request made by a frustrated person who has just got her hands wet and is trying to finish her dishes.

MS. HARRINGTON: Well, let me ask you whether if a telemarketer called to offer a free trial whatever and the consumer said, "Oh, that's an interesting idea," should the telemarketer interpret that as a request to subscribe for the service?

MR. BULMASH: Unfortunately, in the area of some industries, that may be taken as a subscription request, but that borders on fraud. No, "That's an interesting idea," is not an acceptance of an offer in my view.

MS. HARRINGTON: Well, you know, I think that you're suggesting that perhaps the marketing company broadly interpret consumer expressions when it has to do with don't call but not consumer expressions that could just as reasonably, maybe, be construed as a request for an offer -- to accept an offer. I agree with you that

that's not an acceptance, but why should the other apply?

MR. BULMASH: Well, how do you say don't call me again, put me on --

MS. HARRINGTON: Just like that.

MR. BULMASH: Well, right, but under the federal law, under the federal law, those are not the magic words. The magic words are, "Put me on your do-not-call list, share my request with all affiliated entities." Those are the magic words under the Telephone Consumer Protection Act. The phrase, "You drive me nuts with these calls," is commonly or on occasion not seen as a valid do-not-call request when, indeed, the mindset of the individual being called is clearly being transmitted.

One of the other things I wanted to mention is one of the panel members mentioned if people didn't buy from telemarketers, then the industry would just go away. I once talked to an insurance agent who said that he makes -- this is when automatic dialing and answering machine calls were legal back in '87 or so, that he makes 4000 calls a week, he'll get four leads and he'll sell one policy, and the cost of all those calls and visiting all four leads is well overcome by the value of the one life insurance policy that he sells.

So, 4000 calls, one sale, it doesn't mean that if people stop buying, the industry will go away. It only takes -- because of the costs -- dropping costs in long distance telephone service, higher technology levels from predictive dialers, higher call rates, that allows telemarketing to be more profitable because of lower costs.

Thank you.

MS. HARRINGTON: Thank you.

Bob?

MR. SHERMAN: Yes, thank you, from the Direct Marketing Association. Just some quick points, Eileen.

You reminded us that this is on the marketers' access portion of the forum. The Telemarketing Sales Rule is terrific in what it anticipated the balance between business and consumer requirements. If somebody is an existing customer of a company, the company can call that customer unless or until the customer says, "I don't want to hear from you again by telephone." This existing business relationship exception, if you will -- I don't view it as an exception, but allowance -- is something that is not appreciated in the state lists.

And what happens here is you've got companies with ongoing relationships with customers, the next thing you know the customer is on the state do-not-call

list, and what do you do? Can the company call or can't it call? The customer wants those calls, but by signing up with the state list, which doesn't have the exception, it's a real conflict.

I'm trying to address the marketer's need for access. No company wants to waste its time and money on people who have told them don't call me again, but again, the company-specific way to go about this seems to be the best for all involved.

The lifetime value of a customer, not the one-shot deals, is what legitimate business is all about. If somebody tells a company I don't mind buying from you through your catalog or over the internet or walking into your store, but I don't want to hear from you again, that company is not going to call that person again. It doesn't make sense to jeopardize the lifetime value of a customer for a phone call.

And what I will reserve for -- I think it's really a different topic -- is comparing the existing rule to what it could look like. I don't think that's the section we're in now.

MS. HARRINGTON: Right. Thanks, Bob.

Keith, do you have a question?

MR. ANDERSON: I'm an economist, so I get to ask one at least economist question during the day, and I --

MS. HARRINGTON: This is it, this is your moment.

MR. ANDERSON: -- and I don't know whether this is the right place to throw it out, but clearly one of the issues that's hitting around the table a bit -- the gentleman at the end of the table hit it a minute ago -- is it sounds like the technology is there, I'm not sure what the price is, to allow people to create pretty quickly do-not-call lists, but I'm also hearing -- and I can understand -- that those making the calls may not have the proper incentives -- that's my economist's word for the day -- to accept that information.

People say that they -- that the instant you start indicating that you want to get on a do-not-call list, they hang up. How can we create a system that gives the people -- gives companies the right incentives to accept those do-not-call requests rather than just blowing them off? So, that's my question.

MS. HARRINGTON: Mallory, you have got an answer to that?

MR. DUNCAN: Well, I think I have just an observation on that, Mallory Duncan, National Retail Federation.

I think Bob hit upon it, that you have got really two different markets out there. One of your

markets is made up of companies who, in fact, want to have lifetime relationships or long-term relationships with their customers. For them, there is a very decided economic advantage in doing what the customer wants you to do, and if that means take me off the list, they take you off the list.

There is, unfortunately, another market out there made up of companies who really have no interest in anything other than this one-time possibility of a hit, and that's probably the fraud element that you've been looking at. And for them, no regulation, frankly, is going to be effective. It's going to require much stronger enforcement.

This is an issue we revisited when this rule was first developed when --

MS. HARRINGTON: Mallory, what about the point -- I think David made it, it was either David or Bob -- that some company marketers operate at least with the mindset, if not the direction, that what the consumer is saying is you've caught me at a bad moment, but they don't really mean don't ever call me again?

MR. DUNCAN: I -- and I --

MS. HARRINGTON: Do you have any sense of that?

MR. DUNCAN: From the companies I've talked -- I've spoken with, they've tried to provide some guidance

to their customers -- to, excuse me, the marketers as to what is a do-not-call request. "You have caught me at a bad moment" does not sound like a do-not-call request, and I think in most companies that would not be interpreted as that.

MS. HARRINGTON: No, I think what was said is that there is an interpretation placed on the consumer's request to not call again, that this was just a bad moment. So, it isn't necessarily adverse to the company's economic interest to call again.

MR. DUNCAN: Okay, I see what you're saying.

MS. HARRINGTON: I mean, it's very easy to say, Well, no marketing company in its right mind wants to deal with people who don't want to deal with it, you know, I think everybody can accept that proposition, but when is it that you really reach that conclusion?

MR. DUNCAN: I think --

MS. HARRINGTON: And when might it be in the economic interest to keep calling?

MR. DUNCAN: There is inevitably a tension between the marketers who would like to try to reach companies -- reach individuals and try again and again and again and those in a compliance division who are trying to say you have got to come up with some sort of rational rule. Now, how that has worked out, it will

vary somewhat from company to company.

The companies I've spoken with try to come up with a series of guidelines saying if a company -- if a person says something similar to this or something like this, you should interpret that as a do-not-call request and enter that into the system. If the company -- if the person says something on the other side of that line, "This is a bad time to talk now," for example, that is not interpreted as a do-not-call request.

MS. HARRINGTON: Okay.

MR. DUNCAN: But I want to go back, I think the real issue here is the distinction between companies who want to maintain a relationship and those companies out there who are simply out for a quick hit.

MR. ANDERSON: Well, you know, I mean, I agree with you to some extent, and now I'm going to make my friend down here from the nonprofits upset, because that's where I've personally had the biggest problem. I mean, obviously you're not covered by the requirements to implement a do-not-call, but I have had WTA and the Kennedy Center call me, and I say, "Don't call me again, send me mail materials," and they still call me.

Now, I would think that they are people who are interested in a long-term relationship. So, I'm always amazed that they continue to call me, because they make

me madder and I give them less money. So, clearly the theory's right, but it doesn't always seem to work in practice, and I'm not sure whether it's just an expense or what drives it, but I have a little bit of skepticism.

MR. DUNCAN: Is that a comment on the economics or on the law?

MR. ANDERSON: Oh, I'd never raise a question about economics, Mallory, you know that.

MS. HARRINGTON: Kathy?

MS. TORLUCCI: Kathy Torlucci, KTW Consulting, just a couple things to add or to mention.

Regarding representative incentives at the call center level, I have had the opportunity to visit many call centers throughout the United States, and it's not only a sales effort but it's also a quality effort. There are quality measurements that are put in place. There are also do-not-call policies and procedures at the call center level for all the telemarketing companies, and their people are trained in these policies and procedures.

To maybe add on to what was just discussed, yes, there is also scripting, you know, you need to clarify with the customer, "Mr. Jones, is it that you do not wish XYZ Company ever to call you again?" Clarify

that. Is that really the customer's intent? Or is it the customer's intent never to have a telemarketing call? Or is it company division, entity division, that we need to specify? So, there may be some clarification needed.

Just to add on regarding the length of employment, if you travel to the midwest, you will find that the telemarketers, they could be a telemarketer for seven years or six years, and they do a tremendous job. So, the length of employment I think varies from state to state, the location of some of the telemarketing customers.

MS. HARRINGTON: Well, I'm from Wisconsin, and that really resonates with me, the World Oil Group.

MS. TORLUCCI: Yes, that's right.

MS. HARRINGTON: Yes, I am still working as a telemarketer.

MS. TORLUCCI: And also just to add on to what Gordon had mentioned, the business-to-consumer programs are paid on basically a per-hour basis, and to answer your question about the volume, sometimes there is negotiations. If it's an increased volume, the per-hour rate may be reduced, per-hour rate, in the client's favor.

MS. HARRINGTON: Thank you.

MR. HILE: There is no additional premium paid for completed sales in addition to the hourly rate?

MS. TORLUCCI: No, no. The incentives may be at the call center level for the employees, but again, I would like to reiterate the importance of quality and quality assurance that's placed in the call centers for those measurements.

MR. ANDERSON: Are the rates, Kathy, negotiated?

MS. TORLUCCI: The rates are probably negotiated based on program type.

MR. ANDERSON: So, there may well be incentives built in there in the sense that if I anticipate that company A will get me a higher return per hour than company B, I may wind up paying them more for that service, right?

MS. TORLUCCI: Well, I will say that the business-to-consumer programs are normally paid on a per-hour basis. Some business-to-business programs, now, that may be based on performance. So, that's a little different structure, but here we're talking business-to-consumer.

MS. HARRINGTON: Okay, we have five minutes left, seven people wish to speak, so I'd like to get to all of you, but we are going to end at 10:30.

Susan?

MS. GRANT: Susan Grant, National Consumers League.

I'd like to get some more information about industry practice. Gordon seemed to imply that if a consumer didn't buy anything eventually a company would give up and just not call them anymore.

Bob Sherman seemed to imply that whether or not a consumer had ever bought anything, a company might feel that it had some relationship with the consumer, unless the consumer said --

MR. SHERMAN: No, no, no, I said the existing customer, not a prospect, an existing customer.

MS. GRANT: Okay, thank you for that clarification.

I'd just like to know if there's any industry standard, it may not be identical in every company obviously, but for when you give up on a consumer who repeatedly says, "I'm not interested" but doesn't specifically say "Don't call me again."

MS. HARRINGTON: If anyone has information, they can submit it for the record on that, and it would be very useful, I think.

Mike?

MR. PASHBY: Michael Pashby with the NPA.

Most of our telephone business is really done through third parties. As you know, we really don't do telephone calling ourselves.

Just to bring up, our magazines are generally of relatively low value, \$12. We clearly can't afford 4000 calls to sell a \$12 magazine, but I will say that since the rule went into effect, the business through the third-party agents has increased well over 30 percent, and that's not because new people have moved into that business. I think it's because we brought out guidelines for industry to follow, which has made -- ultimately made the consumer feel more comfortable with the sales experience, that our agents are protecting them, and I think as industry goes through this process, the consumer will feel more comfortable.

We have -- the economic incentive that we have to stop calling the consumer, let's say, is if we find that agents are abusing -- third parties are abusing the consumer, our members are required to cut off those -- if there is a pattern of behavior, our members are required to cut those third parties off. They are required to put them out of business.

MS. HARRINGTON: Jason?

MR. CATLETT: Thanks, I'd just like to talk to a couple of points. Keith's question, how can we create

the economic incentives for compliance, the obvious answer is fine noncompliers heavily.

As to Gordon's assertion that companies are not paid on a per-call basis, I used to work for AT&T, and I would routinely see contracts that had a component that said cost per number of calls made, and sure, there are other things there, as well, but that -- that is a part. So, I'm at a loss to understand that.

As to his nice round figure of \$90 billion in the telemarketing industry, let's not forget that fraudulent telemarketing accounts for some \$30 or \$40 billion and that I think that's a number that we would rather not have in our gross domestic product.

MS. HARRINGTON: Linda?

MS. GOLDSTEIN: Yeah, I just wanted to maybe reiterate as a survivor that when we -- during the first rulemaking proceeding, the challenge that we all laid out for ourselves was how to try to draw that bright line distinction between legitimate telemarketers and fraudulent telemarketers, and that was the ultimate goal that we sought to achieve in certain decisions that were made in the first rulemaking proceeding, and I think, you know, as I hear the comments around the table, I think it's that same challenge that faces us now.

My experience is that most legitimate companies

have very detailed guidelines both for, you know, extensive quality assurance programs that were developed since the implementation of the TSR, extensive training programs for the sales representatives to ensure compliance with those policy manuals, excessive monitoring within the call centers and very detailed procedures for maintaining do-not-call lists.

Now, obviously the fact that there continue to be consumer complaints, you know, indicates that there may still be a problem out there, but that problem to some extent may be stemming from that same distinction. I don't know that we've identified yet that it is legitimate marketers that are taking excessively long periods of time to get names removed from do-not-call lists, because again, I don't want -- we've made this point over and over again, but there is a built-in economic incentive to remove those names from the list. I mean, it's one of the most efficient market research data that a company can get, is right there on the spot --

MS. HARRINGTON: Linda, we are right up on the time line and there are two more people, so new thoughts?

MS. GOLDSTEIN: I just want to make one other point, which is that there is also an inconsistency to

some extent in exemptions that exist both under the Federal Home Marketing Sales Rule and then different states have, you know, different exemptions, and it may be that some of the calls that consumers are continuing to get may be from exempt organizations rather than from companies that are not complying either with the federal or state do-not-call provisions, and that's something, you know, we may want to explore.

MS. HARRINGTON: We're out of time, so I'm sorry for those of you who didn't get a chance to speak, but we are going to take our break. We will resume promptly at 10:45.

(A brief recess was taken.)

ANNOYANCE: CONSUMERS' DESIRE TO LIMIT UNWANTED CALLS.

MS. HARRINGTON: Okay, it's time. The subject for this segment focuses on consumer desires, and we have heard some of that in the first session, so I don't want people to repeat what they have already said.

We have a particular interest in the last question here, what technologies exist to give consumers a greater ability to reduce unwanted calls, although we want to cover all of these questions.

And Kathy, I'll note that I went down to my office and got my University of Wisconsin coffee mug for this segment, and if anyone could sing On Wisconsin,

then we'll do the rule whatever way you want us to, or second best, if --

MR. SHERMAN: Here goes.

MS. HARRINGTON: -- if anybody knows what the final score of the Rose Bowl was this year, you know, that would go a long way as well for the record, Bob.

MR. SHERMAN: How about how many yards Ron Dayne ran? My daughter is a recent graduate.

MS. HARRINGTON: Good, that settles the whole -- consumer groups, forget it. This is all, of course --

UNIDENTIFIED SPEAKER: I'm a Wisconsin graduate.

MS. HARRINGTON: Oh, this is really good. This is all good fun. Let the record reflect that the moderator means all of this in good fun and that the Federal Trade Commission is an independent regulatory agency, which will make up their own minds, and they don't associate themselves with anything that I say about the University of Wisconsin.

All right, let's get going here on our 10:45 segment. We are interested in data, hard information, not sort of general whines, as it were. If we want to hear about whines, I can tell you about my own personal, anecdotal experiences about receiving unwanted calls, but we're looking for really solid information here,

because I think the point was made several times during the preceding session, but let me reiterate it, telemarketing is an extremely important and valuable part of our economy. The point that in the initial rulemaking every effort was made to strive to draw a bright line between legitimate and fraudulent telemarketing is absolutely true.

At the same time, the Congress directed the FTC to impose some additional requirements that really don't have much to do with fraud and have a great deal to do with consumer preference and privacy. So, I think that we need to acknowledge that those are important parts of the statute, as well, and also that the debate about privacy has intensified.

Technology, which has created enormous benefit, has also spurred a renewed interest in consumers' -- on consumers' parts and on the part of policy makers in privacy and where lines ought to be drawn. So, against that backdrop, the floor is open.

Marc, did you want to begin?

MR. BEAUCHAMP: Yeah, I was quite surprised in the previous segment that only 1 percent, approximately 1 percent of consumers avail themselves of the do-not-call lists, and I'd like to ask if people had some idea as to how we can dramatically increase that

percentage, because that's an appallingly low percentage.

MR. SHERMAN: Eileen, I would like to clarify so that we don't go down a bad path.

MS. HARRINGTON: Okay.

MR. SHERMAN: I'm talking about -- when I mentioned that figure, that was the state do-not-call list, not the company specific. I do not have statistics on the company specific.

MS. HARRINGTON: We would like statistics from companies to tell us what percentage of their actual and/or prospective customers request to be placed on do-not-call lists. That would be very useful information.

MR. DUNCAN: Can I make just one --

MS. HARRINGTON: Mallory, do you have something specific on that?

MR. DUNCAN: Just a brief comment on that. Again, like Bob, I cannot give the specific numbers as to what number of people are on do-not-call lists; however, I did get a couple of comments that reinforce each other that there have been some sort of events, perhaps the recent interest in privacy that's of recent interest in the public, that has engendered a lot more interest in this issue, and I was told that the number

of names on the list have doubled within the last 12 months, so that is a --

MS. HARRINGTON: Yes, that's helpful.

Gordon, do you have something on that?

MR. MCKENNA: We have recently surveyed our membership, and of those responding, the percentage ranged from 2 to 5 percent, the -- because it varies based on client, varies based on offers and that type of thing.

MS. HARRINGTON: Thank you.

MR. ANDERSON: This is 2 to 5 percent of what, what's the basis?

MR. MCKENNA: Two to 5 percent of those people --

MS. HARRINGTON: Who are called?

MR. MCKENNA: -- that we talked with asked to be put on a do-not-call list.

MS. HARRINGTON: Let me ask at this time again for any information like that that anyone seated at the table or in the audience might have, please submit it. We need solid information. And also, carrying over from our first session, we heard that a great deal of attention is given in training policies and procedures in call centers to these provisions, and if anyone would be willing or if all of you would be willing to submit

written policies on this issue so that we have the benefit of studying those, it would be helpful.

Okay, let's hear from Wanda and then Bill and Jeff.

MS. DELAPLANE: Wanda Delaplane for the National Association of Attorneys General.

Those states which currently do have the state no-call lists, I can give you some numbers on those if that would be of interest.

In Kentucky, our no-call list went into effect mid-1998. It has a significant number of exemptions. When the list went into effect, we did a great deal of public education in order to make the public aware of the fact that this was not a panacea, that it would have very little impact upon their calls. Despite that, we currently have 50,000 people enrolled out of a state population of under 4 million, of that about 1.5 million telephone lines are available.

There has been nothing in the 200 years-plus of Kentucky's history that the Attorney General's Office has ever seen that equaled the public response to the no-call list, despite all of our efforts to say that it wasn't going to do that much good. It literally -- and I mean literally -- fried our telephone systems. It knocked our telephone line out. Nobody in the Attorney

General's office could be reached for over two days because of the impact.

We anticipated we would have 2000 --

MS. HARRINGTON: You should have outsourced.

UNIDENTIFIED SPEAKER: That's right.

MS. DELAPLANE: We think that would be a good idea, and we would highly recommend that to any state which is doing it. Tennessee is in the audience today. They are currently putting their system -- their no-call list into effect, and they have already had the same occasion, that their telephone lines have been broken down because of the overwhelming response, and their list is not even ready to go yet. It's not ready to be implemented.

Georgia had exactly the same impact. Georgia's do-not-call list went into effect approximately the same time as Kentucky's did, mid-1998. They currently have an access of 180,000 people signed up for theirs. They have significantly fewer exemptions than does Kentucky. They had exactly the same response, that there was truly a tidal wave of people who were seeking to be on the list. When told this was -- isn't going to stop everybody from calling, people will almost inevitably say, "If it keeps one person from calling me, I'm better off."

Florida's list has been in effect since 1987. Florida has done practically nothing in the way of consumer education to make people aware of it, and I have available -- and I'll get it for you, but I don't remember off the top of my head the number of people which Florida has.

MS. HARRINGTON: Wanda, I'm curious, under Kentucky's statute you mentioned that there are numerous exemptions.

MS. DELAPLANE: Right.

MS. HARRINGTON: What are those?

MS. DELAPLANE: Well --

MS. HARRINGTON: For example. This is not a pop quiz.

MS. DELAPLANE: For example, right, insurance companies, real estate agents, any public char -- charities, public educational institutions, anyone that has been in business for the past five years at the same location --

MS. HARRINGTON: Do commercial mail drop addresses count?

MS. DELAPLANE: I think that that would, yeah. Many exemptions. I think that there's a total of 24 exemptions, so that the majority of telemarketing efforts are, in fact, exempt.

MS. HARRINGTON: Okay.

Bill and then Jeff?

MR. GILLES: Bill Gilles from the National Association of Regulatory and Utility Commissioners. The Vermont Public Service Commission did some polling in their states of consumer do-not-call options --

(Technical difficulty.)

MS. HARRINGTON: We need one of our FTC tech people. Thank you.

MR. GILLES: -- and probably useful for the record, most consumers said that they wished -- 88 percent wished all telemarketing calls would cease completely --

(Technical difficulty.)

MS. HARRINGTON: Is there anybody -- would -- time out. Could you go find Bruce or somebody?

All right, we're -- is the microphone on?

(Discussion off the record.)

MS. HARRINGTON: Okay, we were about to hear more from Bill about the Vermont Public Utilities Commission.

MR. GILLES: As I was saying, in Vermont, they did some polling data of consumers in a state-wide poll, and one of the findings was that 88 percent of the consumers sort of indicated that they wished all

telemarketing calls would cease. About 46 percent believed they knew there were some options to stop calls, but a smaller percent actually were able to identify what those options were. I believe it was about a third knew about the company-specific do-not-call options, and a much smaller percentage knew about the trade association telephone preference type of approaches.

The other thing that Vermont found and that we can provide for the record later is that they did do an evaluation of an extensive education effort, they did in their state to educate consumers on both the federal rule options as well as the telephone preference service options, and they did find indeed that their education efforts had a substantial impact on the number of consumers that took action.

MS. HARRINGTON: Okay, if anyone has their cell phone on and is talking, you need to get off of it. That's what the problem is. We can't have cell phones being on and used in the room.

Thank you, that's very useful. Could we get the Vermont PUC data for the record?

MR. GILLES: We will get you a copy of that.

MS. HARRINGTON: That's good, thank you.

Okay, Jeff?

MR. KRAMER: A couple of points on awareness and effectiveness. As far as awareness goes, we -- since the Telemarketing Sales Rule went into effect, we had a major campaign at AARP to educate our members about telemarketing fraud, and so in that process we trained fraud fighters to go out all around the country to kind of tell people what to do if they're getting phone calls they don't want.

While we've been successful in educating members that -- to shorten their calls and to hang up and those kind of things, we really obviously haven't been effective in telling people about do-not-call, because according to our fraud fighters, we're finding that less than 5 percent of the people they've talked to across the country are even aware that a do-not-call provision is in effect. So, we're trying to tell people that, and once they're told that, it's like, Well, what do I do to get on these lists? So, awareness is definitely a problem.

As far as effectiveness, and these are preliminary results, because we just got this back, but we have done a survey of consumer telemarketing behavior, and when it's finalized we will definitely submit it for the record, but we are finding -- this is a survey of people 18 and older, not just AARP members,

and we are finding that of the people who asked to be on do-not-call lists, fully 40 percent of them are still being called by that entity. So, there is definitely a problem with the entity when people are asking not to be -- asking to be on do-not-call lists.

MS. HARRINGTON: Thank you, Jeff.

Bob?

MR. SHERMAN: Thank you, Eileen, for the Direct Marketing Association. I guess I'd like to address a few of the points that have been discussed.

On that last point, it strikes me it doesn't matter what the nature of the do-not-call list is, whether it's a state, a federal, a company specific, if there are going to be violations, there are going to be violations. So, I would like to put that one aside for the moment.

I would like to be directly responsive to an earlier question. We have some statistics as of late 1999, they are not absolutely current, but they are probably no more than a quarter off. Florida's list was initiated in 1987, and our information is that in late 1999, there were 112,568 on that list.

MS. HARRINGTON: Does Florida's list require that people pay to be on the list?

MR. SHERMAN: Yes, it does. Georgia has a list,

and our statistics were different from the ones mentioned earlier, but that may be because we're not current. We had it at about 120,000, but that's as of sometime in 1999.

MS. HARRINGTON: Do consumers have to pay in Georgia?

MR. SHERMAN: Georgia, \$10 plus \$5 renewal.

MS. HARRINGTON: Is there any state where consumers don't have to pay? Kentucky? Kentucky?

UNIDENTIFIED SPEAKER: Tennessee, as well.

MR. SHERMAN: Tennessee is not up and running yet, but it will be. Oregon since 1989, 74,000, and we don't know whether consumers pay or how much. We don't have -- Arkansas's list was not available, the statistics were not available to us, nor was Alaska's. In each of these cases, it represents approximately 1 or 1 and a fraction percent of the telephone subscribers in that state.

Now, I would --

MR. HILE: That doesn't break it down by residential and business?

MR. SHERMAN: These are all residential.

MS. HARRINGTON: Bob, do you have any information about how much it costs a marketer to suppress or put a --

MR. SHERMAN: If the question is how much does it cost to process the company-specific do-not-call requests, I don't have good information. The information I got was so all over the lot, I'm not comfortable even mentioning it. I was told that running -- running a prospect list across a do-not-call list is not a burdensome expense.

Now, I would like to -- with -- Eileen, with your permission, I'd like to raise something that I think is absolutely threshold to this whole thing. If the issue here today is the effectiveness of the do-not-call provision of the Telemarketing Sales Rule, I have to ask the basic question, and that is, has anybody examined whether the complaints are coming from companies or about companies that are not covered by the rule? Local calls, purely intrastate calls? And I'm not accusing any group of violating anything. I just -- I'm asking the question. Not-for-profits? Political fundraising? The regulated industries, such as financial services, insurance?

I mean, I'm sitting here and I don't know the answer, but it strikes me that if these are companies and industries that do a lot of telemarketing and if the complaints we're hearing from consumers -- not exclusively, I'm not naive, I'm not saying that those

who are covered by the rule are absolutely perfect, but if a large portion of the complaints we're hearing about or these polls -- and, of course, you know, polls are only as good as the question that was asked, but if a lot of that has to do with these companies that aren't covered, then I submit we ought to know that. Let's find out where the problem is, and if it means the Federal Trade Commission getting some of its sister law enforcement agencies to pass similar rules and regulations to cover that, then that may be the direction we should be going.

I am a -- DMA is a strong advocate for the company-specific methodology, because it gives the consumer the ultimate choice. A binary system of go/no-go, take me off everything, when nobody has necessarily explained the implications or ramifications of that, is not necessarily in the consumers' best interests, not necessarily in businesses' best interests.

Now, one last point, for those of you who are sitting there saying, Yeah, but your organization has the telephone preference service, let me talk just for a minute about TPS. TPS started in 1985, before there was the TCPA or the Telemarketing Sales Rule. It was the industry's way of attempting to self-regulate in this

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

other than the fact that we have received complaints, and we know who consumers are complaining about in that universe of complaints, but we can't say that that universe of complaints represents any kind of sample of consumer experience. And I agree entirely that research on this issue would be appropriate, and if anyone wants to fund it, that would be terrific.

Let me also say anecdotally, from looking at some of those complaints and from my own experience as a consumer, I think that you hit on an issue, and that is that in many instances in my own experience the repeat calls after asking to be put on the do-not-call list are coming from entities that are not subject to the FTC's Telemarketing Sales Rule, not necessarily all, but that's an issue, and I think that's an important issue.

Jason?

MR. CATLETT: Thanks, Jason Catlett.

Could I ask Bob for a little clarification on his assertion that the great increase in requests for do-not-call lists is due to the dead air or the abandoned call problem? I mean, we have heard from William that 88 percent of people would like to get no telemarketing calls at all. Could you tell us why you believe that is --

MR. SHERMAN: Sure. They call in to the DMA's

action line, and they speak live to a DMA representative, and they explain what the problem is --

MR. CATLETT: Right, but is it --

MR. SHERMAN: -- and virtually all of them are pointing to the dead air/hang-up issue. I don't have any -- I haven't seen the survey that was conducted in Vermont.

Just as a very quick aside, since I'm a trademark infringement litigator and deal with market research experts for a living, the question and the way it's presented frequently determines the result, and I don't know what the question was that resulted in an 88 percent response, which is, of course, an enormous response, but I suspect it has something to do with the question.

MR. CATLETT: Right, but they are two separate events. You -- the TPS request is made by mail to DMA, and you're measuring what people are calling in for, so if you could --

MR. SHERMAN: When they call in, they are told how to get on the TPS, and they are -- realtime, they are given the application or sent the application, and there is a direct -- there is a one-to-one correspondence between these calls complaining about the dead air/hang-up and the increase in TPS. You could

argue that they are totally unrelated. We don't think so.

MR. CATLETT: Well, it seems to me there are some people who sign up for the TPS who don't call in, correct?

MR. SHERMAN: I suspect so, sure.

MR. CATLETT: Right. So, there may be --

MR. SHERMAN: Yeah. We just think it's more than mere coincidence.

MR. HILE: Bob, can you sign up for TPS online? Can you submit it through e-mail?

MR. SHERMAN: No.

MS. HARRINGTON: But you can sign up for EMPS online? In fact, that's entirely an online deal, isn't it?

MR. SHERMAN: Yes, and that was just initiated yesterday.

MS. HARRINGTON: Any thought that TPS and mail preference could go online, too?

MR. SHERMAN: Don't know.

MS. HARRINGTON: We're never satisfied.

MR. SHERMAN: I understand that, but the -- I had -- I wasn't asked to, I had to volunteer that the expense of voluntarily running that service is starting to run away with itself.

MS. HARRINGTON: Yes, yes, yes.

Russ and then Wanda?

MR. SMITH: If I can make one quick comment to that, that Canada does accept -- the Canadian Direct Marketing Association does accept online requests and they have for a number of years.

In any case, to just discuss the TPS and the company-specific lists, if those lists worked, I wouldn't be here today and I wouldn't have collected all those damages off of all those major members, and the issue of consumer awareness, a lot of consumers are aware that there's rules and, in fact, there's two rules, there's the Federal Trade Commission and the Federal Communications Commission, and then there's attorneys general and the Better Business Bureau, and people don't really know where to send their complaints.

And unfortunately, under the Telemarketing Sales Rule, there's no private right of action unless you lose more than \$50,000 in fraud. So, generally I tell consumers that the right under the Telemarketing Sales Rule is the right to send the FTC a complaint letter, and that's kind of about it. You just sit there and wait and hope someday something will be done.

So, maybe I could ask the Commission is what

plans are there to enforce the rule? From what I understand, the only thing that's been enforced up to this time are some major fraud cases, but a lot of the complaints are simply the do-not-call, and I don't see where the Commission would have the staff to look at these complaints.

MS. HARRINGTON: Well, you're absolutely right, that our enforcement priority has been fraud, and it will continue to be fraud until there isn't any more fraud. That was why this rule was issued primarily.

The do-not-call provision is an important provision. We don't hear nearly the level of concern from the public about it that we do -- that we continue to hear about misrepresentation and fraud. While we're very sympathetic to the inconvenience and irritation that a violation of the do-not-call provision can cause and may well bring enforcement action in the future on that provision, we also are concerned about real economic injury that is caused when money is taken out of consumers' pockets because they've been deceived.

We are very aware of the fact that the Telephone Consumer Protection Act gives consumers a private right of action and would urge consumers to use that, which is not a complete alternative to government enforcement of the law of the land, but because there is a right to

self-help here, I think that the urgency relative to the urgency on fraud is diminished.

MR. SMITH: And I would like to point out that the state attorneys general also have the right under the TCPA, the telemarketers not giving proper identification or they don't have a written policy, they can sue for every single person who they called in that state, but as far as I know, no attorney general has ever used that law or even attempted to up to this time.

MS. HARRINGTON: Well, of course, from the law enforcement perspective, I would say the fact that something hasn't happened doesn't mean that it isn't going to or won't. You are correct to point to the resource issue and constraint. And again, I would reiterate that fraud costs real people real dollars, and our first priority always will be stopping that kind of real economic injury.

Wanda?

MS. DELAPLANE: This is Wanda Delaplane.

I wanted to make you aware that the Research Center at the University of Kentucky last year conducted a survey, and in that survey -- on telemarketing, and in that, 89 percent of the response said that they felt telemarketing calls to be, quote, "annoying and

intrusive."

I will be glad to get the rest of the survey available to you so that you can put it into the record.

MS. HARRINGTON: Good.

MS. DELAPLANE: Second point, with regard to the private cause of action, I think that the biggest drawback -- the biggest hindrance to seeing more done in the way of private cause of action is that when there is no telephone number that shows up on the Caller ID, when there is no good address, citizens are very limited in their ability to be able to get any starting point.

I think that if it was required that Caller ID show up for the company so that there was a starting point for citizens to go somewhere with their call, you would see an increase in the number of citizens, because the people I talked to would be delighted to be able to take the matter into their own hands, but they don't have any means.

MS. HARRINGTON: All right, let me put on the table for discussion the question of whether there would be support for a requirement in the rule that would prohibit Caller ID blocking by telemarketers who are subject to the rule, just a question to put on the table.

Susan?

MS. GRANT: Susan Grant, National Consumers League.

We in our centennial survey last year also asked consumers about their feelings about telemarketing calls, and we'll be happy to supply that to the FTC for the record, but what is really lacking here is the answer to another threshold question, and that is the extent to which consumers are aware of their do-not-call rights. Vermont may have some useful information, but I don't know of any national surveys that have asked that question, and I think that that's something that really needs to be done before we can formulate solutions to the problem of consumers still feeling as though they don't have adequate control over their telephones and get calls that they don't want to receive.

MS. HARRINGTON: Thank you for the submission that you're going to make, Susan. Thank you.

Michael?

MR. PASHBY: Michael Pashby with the NPA.

I agree with what's been said, that education is one of the most important things for consumers, but I do want to go on the record in commenting about the statistics that have just been given. When we hear 88 percent or 89 percent of consumers do not want to

receive telephone calls, that has a suspicious habit of turning up in the press as fact very quickly and is used as the basis for future discussions.

I think if statistics of that nature are going to be entered into the record, we should also see the question that was used to generate those numbers, because we tend to find that when a question is asked of that nature, one may well get a statistic like that, but if one has follow-up questions, which asks, do you want to receive a phone call from our insurance agent offering you a new product, do you want to hear from your local museum, do you want to hear from your local opera company, the answers are yes.

So, this goes back to our question or our statement about individual company do-not-call lists as being the most important part of this discussion. People do say they don't want calls except for the calls they want to receive, and it's how do we judge which are those calls, and I think if we are going to discuss statistics of 88 and 89 percent, we should also see the questions that were asked to generate those statistics.

Thank you.

MS. HARRINGTON: Bob Bulmash and then Bob Sherman.

MR. BULMASH: Bob Bulmash, Private Citizen.

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 marketers 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

that issue.

MS. HARRINGTON: Thank you.

Kathy?

MS. TORLUCCI: Kathy Torlucci, KTW Consulting.

I would just like to mention that in script preparation for telemarketing programs, what is the major concern for the telemarketing industry is to identify who the caller is and to have all of the compliance issues up front, the up-front disclosures in the scripting.

Also, regarding 800 numbers, for any type of questions for the consumer should they have a question regarding the call is part of a closure for a scripting for a program.

And also, for the record, I do have a copy of the do-not-call procedures and policies to -- for internal processes in the telemarketing call center, which I'd be happy to supply you with.

MS. HARRINGTON: Okay, thank you.

MS. TORLUCCI: Okay.

And also, the telemarketing service bureaus need to exercise due diligence to ensure that the telemarketing scripts are in compliance, and that is something that they do and is part of their quality control measurement within the call centers.

MS. HARRINGTON: Thank you.

I would just note for the record that the FTC rule does require that in outbound telemarketing calls there be a disclosure of the identity of the seller. I would also note, since no one's card is up and we're closing in on the lunch hour, that in the initial rulemaking, the issue of whether or not there should be specific language requirements imposed by the rule or explicit, precise timing requirements imposed by the rule was quite an issue, and the Commission, in issuing the final rule, clearly accepted the view that there needed to be prompt disclosure but not prompt regulatory mandate of what the marketing industry would call a "kill" message; that is, an overly legalistic, immediate disclosure or something that would be an automatic turn-off. But I think that that's still a tension that exists around this issue.

I have a question, and that is whether if the FTC staff were to issue an advisory that said that a requirement that the identity of the seller be disclosed includes a requirement that when customers ask for the name, address and phone number of the seller who's calling, that that -- in response to a request, that that information must be given, whether that would be a workable proposition.

Wanda?

MS. DELAPLANE: A couple of questions, and the first is for Linda Goldstein.

Could you amplify your comments about quality control by companies when that company outsources? How does that happen -- how does the quality control happen?

MS. GOLDSTEIN: It's usually handled on a contractual basis so that initially, the call center needs to warrant to the company, to the marketer, that they have certain compliance procedures in place. They need to warrant the procedures by which they maintain their do-not-call list. They need to warrant that they have training programs in place, that those programs are in compliance with the Telemarketing Sales Rule and with all applicable state laws. And depending upon the magnitude of the work that's being done in many instances, clients will actually go and visit the call center so that they can see for themselves what kind of quality assurance and monitoring programs are in place. That really depends on, you know, how significant the relationship is going to be.

And then there are procedures -- there's usually an allocation within the contract of compliance with the record keeping provisions, so at least in the -- in most

of the agreements that I've seen, there is a mirroring, in effect, if you will, of the key components of the TSR and the various state requirements, as well, and representations by the call center that they're in compliance with each of those provisions.

I also, just to your point, Eileen, I was shuddering a little at the notion of being required initially as part of the prompt disclosures to automatically disclose address and telephone number, because I think, if memory serves me correctly, we had discussions about that during the initial rulemaking and decided to be somewhat more general in terms of --

MS. HARRINGTON: Right, that's where the Commission came down then, but my question here is different.

MS. GOLDSTEIN: I think if it were in response to a request, I'd obviously have to take that back to my membership, but I wouldn't foresee a problem with that. I think a legitimate marketer would want to be forthcoming with that information, and maybe that's the right balance, so that you're not eating up the phone time with a consumer who doesn't necessarily need that information, but the obligation is there to make it available to those who do.

MS. HARRINGTON: Okay.

Gordon?

MR. MCKENNA: I'd like to have a follow-up to Wanda's question on what does the client do to ensure quality. In the particular -- and I don't think my company's any different from the rest of our member companies, but we have in the Lexington facility, we have -- we actually have two of the client's representatives there to ensure that the quality is done correctly, but we now have technology that allows you to not only -- you can be in Alaska and monitor what's going on in Florida by not only hearing but also viewing the computer screen remotely to ensure that quality, and we have clients that monitor on a regular basis to ensure that what Ms. Goldstein mentioned, that contractually we're meeting everything in their quality standards, making sure that all of the legal ramifications are met. Those clients have a lot of exposure out there, and they want to make sure that we do what they say they want us to do.

MS. HARRINGTON: Thank you, Gordon.

Russ?

MR. SMITH: Yeah, I'd just like to point out that the identification requirement is already there in the FCC rules. They have to give you the telephone number or address and the name of the company for every

call. You don't have to ask. So, I guess the point is that these have to be --

MS. HARRINGTON: Is that in the statute?

MR. SMITH: Yeah, it's in the FCC rules that are implemented by the statute, at 47 CFR --

MS. HARRINGTON: Okay, I see.

MR. SMITH: And the identification, it sounds very easy, like there is one company being represented in the call, but you'll find a completely different story when you actually get the calls. You might have a credit card, an Affinity call, let's say an airline, and the credit card is with the bank, but they are selling you insurance to go with that card from a third company and they're calling you from a telemarketing service bureau. They call you and say this is such and such and such, and you say, okay, send me your written policy, and then they send the written policy, has a completely different company name, doesn't say anything about --

MS. HARRINGTON: Well, I would suggest that that violates the FTC's rule, which requires the disclosure of the identity of the seller.

MR. SMITH: Who's selling, the bank or --

MS. HARRINGTON: If it's insurance, it's the insurance company.

MR. SMITH: Maybe. It goes with the card.

MS. HARRINGTON: Whoever gets the money is doing the selling, and if multiple parties get the money, then they're all doing the selling.

MR. SMITH: Well, that's -- then you have to sit there and argue with lawyers -- as a consumer, you say, Okay, who are you representing? And in some of these cases, you get a dead silence, because they can't answer it, and then they change their story three or four times and they come up with written policies from different companies, and in the end, you're not really sure who was being represented, and then -- so, yes, if you go with your story, you say, Okay, well, I'm going to sue you all, and then you have to bring four defendants into court. You know, it's not as easy as it sounds it my point.

MS. HARRINGTON: Right.

Michael?

MR. PASHBY: No, I'm not --

MS. HARRINGTON: Oh, I'm sorry. Everybody must be getting hungry. There's no time against completing this segment of the program early. It means that you get more time for lunch.

David?

MR. MORTMAN: Let me just ask one question. We were talking about the issue of consumer awareness,

telemarketers' awareness, compliance with certification and training, following the script and whatnot. One of the things I had difficulty doing in trying to do some research about the effectiveness of telemarketing legislation, whether it be the TSR or with regard to some of the state actions, was the difficulty of finding what cases have actually been adjudicated, what cases are pending that deal with do-not-call issues.

When I spoke to some of the attorneys in the field, it was clear that -- who represented telemarketers -- I didn't -- I could read some of the websites, so I didn't have to talk to consumers, but it was clear that the less centralized that information was, the better, because the more you could actually see on a screen, the greater the awareness came of the issues.

I wondered if there wasn't some ability for the FTC to have a general webpage where there was a centralized area for the actions in the do-not-call TSR area.

MS. HARRINGTON: It sounds to me like a consumer demand that the marketplace ought to respond to.

MR. MORTMAN: Okay.

MS. HARRINGTON: But we're not -- we're not reporters. That's not part of our mission. I

understand the need, but historically and typically when there is a need for consolidation and reporting of legal information, the marketplace responds to that. We report on our own actions.

All right, well, I want to thank everyone for your good and spirited and substantive discussions and contributions this morning. For those of you who were here five years ago and haven't been back since, Mr. Ming has arrived up at the Top of the Trade food center, and he's just a fabulous entrepreneur, and he would be furious with me if I didn't tell you that you can go right up to the seventh floor of the FTC and get something to eat. There also is information outside about other choices that you have in the immediate area.

We will resume promptly at 1:30 this afternoon, and I thank all of you.

(Whereupon, at 11:52 a.m., a lunch recess was taken.)

AFTERNOON SESSION**(1:30 p.m.)****CURRENT REGULATORY APPROACHES**

MS. HARRINGTON: Okay, we are going to begin the afternoon session, and it's all Harrington all the time. This session is going to be moderated by Katie Harrington-McBride, and before I turn it over to her, let me make one housekeeping announcement, and that is that BNA is here, they are recording these proceedings, and they have asked us to ask you to please speak into the microphone. The BNA person cannot hear you all if you don't use the microphones. Thanks.

So, this is my much younger colleague but not my much younger sister Katie Harrington-McBride.

MS. HARRINGTON-MCBRIDE: Well, and I guess time will tell, and probably not much of it, how much less able I am to spot tents that are on end, so I hope you will all bear with me if I don't see your tent up right away. It's an acquired skill, I understand.

We had I think a very productive session this morning and had an opportunity to hear from two sides of this debate, from telemarketers and what their needs are and from consumers and representatives of consumers and what their perception is of telemarketing, and I think that many of the issues that have been raised will help

us as we proceed to look at the rule.

We're going to look this afternoon at regulatory approaches that have been taken and to talk a little bit about the variety of approaches that have been taken, which is one thing that I think distinguishes this part of our rule from some others, is that so many different approaches have been put out there, and we'd like to hear from all sides as to the costs and benefits of these various approaches and the practical details about how they affect you.

So, to start the afternoon, on the agenda we have the first point, are federal do-not-call provisions effective in curbing unwanted telephone solicitations? We obviously talked about that some this morning, so if anyone has anything else to say, I'll open it up.

I guess we -- we may have covered it or it may just be the lethargy that comes from a delicious lunch at Mr. Ming's.

MR. SHERMAN: I'll take a shot at it.

MS. HARRINGTON-MCBRIDE: Okay, Bob, thanks.

MR. SHERMAN: Okay, it will be short, because it will be slightly redundant but I think important enough to repeat. I think the key to determining whether or not this rule has been effective, and from our perspective it has been, is to determine whether or not

the noncovered members of industry are the ones about whom you receive complaints.

In other words, the rule could be very effective and you wouldn't necessarily know it if you're getting complaints because people are being called after they may have asked the company not to call, and if it's members of industry segments that are not within the rule, well, that really doesn't tell you that the rule itself isn't effective; it tells you the rule can't go far enough because of jurisdictional issues.

And I think that is really -- I don't know who else could do that other than the Commission or the government, is to survey or research whether coverage is the issue rather than effectiveness. We are strong believers in the company-specific do-not-call. I don't have the statistics and I don't want to misrepresent anything, but I am quite comfortable in saying millions upon millions of names are on company-specific do-not-call lists in the aggregate, and if people didn't know about it and it wasn't effective, how did all those names get there?

MS. HARRINGTON-MCBRIDE: Okay.

Mr. Bulmash?

MR. BULMASH: Bob Bulmash, Private Citizen, Incorporated.

In response to Mr. Sherman's claim that regulation is effective as it stands now, I get calls every day from folks across the nation who tell me that they've asked specific firms not to call and that those specific firms continue to call in violation of a do-not-call request, which is clearly, plainly and expressly made.

Furthermore, the firms that these folks are complaining of are not the small mom-and-pop dry cleaners. It's not unusual for these to be common carriers, one of the big three, as a matter of fact, who continue to call people in defiance of a do-not-call request not once, not twice, not five times or 15 times but up to 22 times after a do-not-call request is made.

If, indeed, common carriers who lobbied regarding the Telephone Consumer Protection Act for the Act to be formulated in a fashion which they wanted, if they cannot comply with a simple do-not-call request, I can assure you that it is an ineffective law as far as stopping unwanted calls from sales solicitors to residences.

MS. HARRINGTON-MCBRIDE: Marc?

MR. BEAUCHAMP: Yeah, Marc Beauchamp with North American Securities Administrators Association.

To your point about whether firms that are

regulated or covered are the problem or not, in the securities area, there are about 6000 securities firms. There are a handful of securities firms that -- they are only in the business of stealing money. They don't care about the rules. They're not going to abide by do-not-call provisions. They're not going to add people to -- if people ask to be placed on a do-not-call list, they are not going to be placed on a do-not-call list. If they complain about treatment to a broker, their complaints are not going to be forwarded to regulators.

So, in the securities industry, there is a subset of the brokerage industry that doesn't obey the rules, and regulators have tried in recent years, with some success, to shut firms down, but there is a hard-core element, criminal element, in the securities industry that is not going to respond to this.

An overall concern, though, is how do you educate not just investors, but consumers at large, that such do-not-call rules exist and get more and more to buy in?

MS. HARRINGTON-MCBRIDE: Okay.

MR. HILE: Bob, I would like to ask if you know of any data that would support the proposition that a lot of the calls that are coming despite a do-not-call request are coming from noncovered entities? Is there

anything out there that you know of that would support that? I mean, it's a reasonable assumption, I'm not challenging it. I would just love to see any data that --

MR. SHERMAN: No, it's as anecdotal as is the rest of the data that people, you know, ask 22 times and still get the call.

MS. HARRINGTON-MCBRIDE: Okay.

Wanda?

MS. DELAPLANE: Wanda Delaplane.

With regard to the federal rule and what would make it more meaningful, there are currently some holes in it that make it at this time desirable or necessary for there to be state laws. For example, the rule applies only to intrastate calls. So, if you've got a telemarketer calling to a Kentucky consumer, that's not covered. So, you've got that holes it falls through.

In addition, you have the exemptions, which -- such as charities or some of the other folks that it doesn't cover, so that there are certain existing groups which aren't covered by the rule, so that from the question, are there some things that the federal rule doesn't cover that we think need to be covered, yes, there are.

MS. HARRINGTON-MCBRIDE: Well, that certainly

takes us to a point on the agenda a little bit further down, but I think it certainly is something that we're interested in. Wanda or anyone else at the table who could add to, what has driven the states to enact the no-call legislation that's been enacted in the last two years? Is it these gaps? Is it solely these gaps? What's the feeling?

MS. DELAPLANE: The overwhelming number of calls which we get from our people, from the citizens themselves, I cannot tell you how intense, how strong an issue this is to the people. We get calls by the hundreds, the legislators report to us it is far and above the biggest issue which they get any calls on, that people are saying that they absolutely want some means of controlling the calls that come into their home.

Just a minute, if I could also pass the question to Neal and see if he's got anything to add to that, Neal Fishman.

MS. HARRINGTON-MCBRIDE: Neal, could you tell us who you are, for the record?

MR. FISHMAN: I'm with the Connecticut Attorney General's Office.

Part of the reason that we get so many calls, I believe, is because of the education of the public in

terms of our enforcement actions in industries such as contests and sweepstakes, where we have told them to contact us with these solicitations, that may enable them to get off the mailing list, and I agree with everything Wanda has said. The response from the public has overwhelming, not only on our bosses, but on our state legislators, to do something, and I guess about nine states have responded.

Thank you.

MS. HARRINGTON-MCBRIDE: Okay.

Eileen?

MS. HARRINGTON: A follow-up question for Wanda about -- concerning the observation that the gaps in the -- and it would be not in our Telemarketing Sales Rule but in the underlying statute, the FTC Act, which excludes from our jurisdiction nonprofits and insurance sellers and banks that are regulated by other regulatory entities and so forth.

If the state law is driven by consumer and constituent demand -- and I don't mean this to be a trick question, but we don't have 24 exemptions in the FTC Act.

MS. DELAPLANE: Right.

MS. HARRINGTON: I mean, it seems that at least for your state that there's some who want to have it all

ways; that is, constituents are demanding legislative action, so the Legislature acts but acts in a way that sort of creates a Swiss cheese, you know, bill. Is that what's going on or -- you know, how come some -- how come 24 exemptions in Kentucky?

MS. DELAPLANE: The last hour of the last day of the session, that was when the exemptions came in. I don't think anybody in Kentucky is satisfied with the current status, that it's unsatisfactory. So, what we've done we don't believe is the solution, but what I would say is that what the states are all experiencing is the same, that it is an intensely important issue to the citizens of the state, and they're looking at this time to their states to do something about it.

One other thing I wanted to add that appears to be going on with the efforts at state legislation is that many of them do have, as part of their no-solicitation call legislation, a provision that in the event there is a national data no-call list established, that the states' information will automatically flow into it.

MS. HARRINGTON-MCBRIDE: And again, Wanda, sort of a follow-up on that, something that I'm curious about, with the states having taken action because they're hearing this outcry from the public, is there

any data that you have that suggests that consumers are transmitting this sentiment to you, that they're saying we're not getting satisfaction elsewhere? Is there -- are they not aware of other options? Are they -- you know, they're sensing -- you're sensing this annoyance, but have they explored other options or are they not aware of them?

MS. DELAPLANE: No, for the most part, many of our people have jumped through every hoop that they're aware of in order to get the calls to stop.

MS. HARRINGTON-MCBRIDE: Okay.

MS. DELAPLANE: And again, our office, like Connecticut, we do a great deal in the way of education. Any information which we send out has the information about the DMA list, it has every source that we know to contact in order to have names removed.

MS. HARRINGTON-MCBRIDE: Thank you.

Bill, and then I think we'll go to Linda.

MR. GILLES: Actually, I think what I was going to say pretty much reinforces Wanda's comments. I talked to a number of our state commissions that -- in states where they have enacted legislation, and in general there wasn't one answer, but the gaps was one -- the gaps in coverage was one that came up quite frequently that was a driver, and the other is that --

just that the large volume of concerns received from citizens.

I mean, it apparently is not working, and that drives states to want to take some -- some action to deal with it as states and concentrate the enforcement effort.

It does occur to me there may be a little bit of a chicken and egg, because my perception also in talking to our state offices is that there is a general lack of awareness among a large part of the population, what their options are, and to some extent maybe education of existing rules and options may be helpful, but I can't really say.

MS. HARRINGTON-MCBRIDE: Okay.

Do we have any data on the enforcement actions by states with no call lists? Is any of that out there? Is anyone aware of anything on that?

MS. DELAPLANE: I will answer it. To the best of my knowledge, there is not any central point for it. I know in Kentucky we don't keep that as a matter of record. Most of that would be at the trial level, at the state trial level, and there isn't any one point in Kentucky where you can just pull that up.

MS. HARRINGTON: Has Kentucky brought an enforcement action under its do-not-call law?

MS. DELAPLANE: Yes, we have, and it was against an out-of-state entity.

MR. HILE: Can I ask what penalties attach for a violation of the do-not-call law?

MS. DELAPLANE: Well, in Kentucky, and I think we are in the minority on this, both civil and criminal attach, that on the civil side, the ability to get an injunction, restitution for the consumer and a penalty of up to \$2,000. On the criminal side, as much as a Class D felony, which is one to five.

MS. HARRINGTON-MCBRIDE: Okay, Linda?

MS. GOLDSTEIN: Thank you.

Just to comment further on the state do-not-call lists, it would probably come as no surprise to hear that the proliferation of state do-not-call lists is becoming a concern for the industry, not because the industry is opposed to the maintenance of do-not-call lists as prescribed by the TSR and the TCPA but because many of the state laws are inconsistent. They're inconsistent in terms of the exemptions, and there are inconsistencies in terms of the frequency with how often the lists are updated, which makes it difficult and somewhat burdensome for the industry to comply with different cycles of mailings, and we can only anticipate that the problem will be compounded in the coming year

as we hear reports that extensive additional legislation is likely.

And the one thought I had -- this is really the first time I had had an opportunity to hear firsthand some of the motivation for the state do-not-call lists, and it strikes me that if a key motivation is, in fact, the gaps that exist under the FTC rule, that that can't be filled by the FTC because of jurisdictional issues, maybe the state rule ought to be that gap-filler, meaning that maybe the state laws ought to be limited to the categories of industries that are exempt but have a safe harbor to the extent that companies that are covered by the Telemarketing Sales Rule are complying with that rule, that that -- that they -- that that, without using that hard word exemption, but that that, in fact, would relieve them of the obligation to go up against that state do-not-call list.

And the other inconsistency is that the state do-not-call lists are not company-specific, while under the TSR the obligation to maintain those lists is, and that continues to be an important concern for the industry.

MS. HARRINGTON-MCBRIDE: Sure. I recognize that much of the information that we share here at the table today is necessarily anecdotal and that many of you have

promised to send us hard data, but one thing that I think might be useful is if there are -- and it's probably something that's somewhat difficult to quantify, but if there is data that suggests the different burden of compliance, and that's sort of that data that hints at how is this different from two years ago before it proliferated? I know that some of the states have had legislation since the late eighties, but that kind of data would also be helpful.

MR. HILE: It would also be interesting to see whether there are benefits to this. Does this help industry by cutting out the people who are hostile to telemarketing calls? Does it prevent you from wasting money calling people that don't want to be called? So, not just the costs of complying but also any possible benefits that might accrue.

MS. GOLDSTEIN: Well, and again, I would just say from a philosophical standpoint, our general feeling is that if you don't have a company-specific system, and the only system that you have is either I don't want to -- I do want to receive calls or I don't want to receive any calls, I think by its very nature what you're going to be doing is cutting off everybody from receiving some calls that they might otherwise want to receive.

MR. HILE: But if only 1 to 5 percent sign up for it, it would seem that that would be the folks that really don't want to get any calls.

MS. GOLDSTEIN: I mean, I don't have the data -- I --

MR. HILE: If you had 60 to 70 people signing up for these things, that would be an indicator that some people are doing it casually without really thinking it through, you know --

MS. HARRINGTON: Sixty to 70 percent you mean?

MR. HILE: Yeah.

MS. GOLDSTEIN: But you -- I mean, you don't -- you don't know -- and again, this is all anecdotal, and I'll just throw this out --

MR. HILE: Right.

MS. GOLDSTEIN: -- but that there is also the strong possibility, and we get these reports anecdotally, that a person may often be motivated to make that call because they receive a call from a -- from a fraudulent telemarketer that's abusive or harassing and are so frustrated with that call that they're motivated to just get their name on the list when perhaps in a cooler moment or if they had the choice of being specific to that marketer and not to others, they would exercise that choice, as well.

MS. HARRINGTON-MCBRIDE: Okay.

Jeff?

MR. KRAMER: Thank you.

This point goes to -- not to the merits of the individual state legislation -- legislative efforts but actually to why the states are being faced with this burden now, and again, it gets back to what we talked about this morning, about the fact that awareness is so low, that there is actually a provision in the Telemarketing Sales Rule at the federal level, and even if people are aware of it, an AARP survey we did last year on older consumer behavior found that only 4 percent of adults -- of people over the age of 18 actually complained to a federal agency of any kind about any problem, while many of them actually did have some problems. Very few complained to federal agencies. So, a lot of times they will turn to the state because they feel more comfortable talking to the state about their problems, so I think that helps generate the state activity.

I guess to talk about Linda's concern about differing state legislative efforts, I think perhaps we could move toward, and we mentioned it briefly this morning, a national do-not-call list so you wouldn't have to worry about the individual state problems. And

as Kentucky mentioned, you know, they're ready to dump information into a national database. So, I think other states are -- that I've talked to are willing to do the same thing. So, that might help alleviate a lot of these problems.

Thank you.

MS. HARRINGTON-MCBRIDE: Okay.

Let's hear next from Tim.

MR. PHILLIPS: I just wanted to suggest to you that at least I know for Tennessee and probably it's the same for most states, for those who are enacting do-not-call registry, they are probably not -- they're probably not aggregating or doing away with what most states have as your business-specific do-not-call list. So, I mean, I don't think you're going to -- simply because you're -- you'll miss a lot of people that way who, yeah, they do want to be called, but they want to use -- they want to be able to use the business-specific do-not-call list.

So, I don't think you're -- the problem that Linda was talking about, I don't think it's actually going to be there for most states.

MS. HARRINGTON-MCBRIDE: All right.

Let me do David and then Mallory.

MR. MORTMAN: Thank you, David Mortman for

Callcompliance.

I don't want to get into the issue of a national list or preempting a state list, but there is a gap, and it's in a more practical sense, and that is that as we look to the industry and the growth of it, we've talked about technology in the morning and whatnot, one of the things the state lists don't permit is to actually identify, in a sense, company-specific calls that they don't want.

In other words, it's either all or none, and I can only tell you from our point of view, within our company, we're looking into the ability to actually create the system that allows a consumer to choose who they want or who they don't want, which we would welcome states to look at.

It is a difficulty, because I believe that consumers do want certain calls and probably don't want others, and having a blanket mandate of do-not-call probably doesn't serve anybody's interests in the best way. I might want calls from insurance companies or a securities company, knowing what product is available, but I might not want calls from other sources.

It seems to me that --

MS. HARRINGTON-MCBRIDE: Well, David, maybe I can ask you this, it's something that maybe you should

have been asked this morning, but it occurs to me now.

To what extent has consumers' expectation about the sort of push and pull of information in their lives, with the internet being there 24/7, you're able to go out and get data that interests you, and there's a wide variety of information available. Has that changed an expectation? I mean, is there -- and is the internet a replacement in some ways for getting at information that you specifically want rather than having to weed it out?

MR. MORTMAN: It's good that you raised that, and obviously everybody around this table ought to have internet in the back of their mind, because that's where the industry is headed, but recognize that today, everyone does not have a computer, everyone isn't on the internet, even though it's growing rapidly, and certainly all the statistics of two computers in every garage is going to be here very quickly.

I think we're talking about a review of this legislation now, and we're talking about what's effective now and what should be done, if anything, to maintain the effectiveness of this kind of legislation in the future, and we're talking about federal and state relationships.

My only point in this conversation is to

indicate that one of the gaps that I believe exists on the practical level is the ability for states to recognize, within the mandated list environment, that an all or none list may not be in the best interests of the state or the telemarketer, and that's the balance we're trying to find.

I believe technology is available or will become available that would allow a consumer to identify what they want to do. I think many consumers now do complain but don't put themselves on a do-not-call list because they do want some information.

MS. HARRINGTON-MCBRIDE: Okay.

MR. MORTMAN: And they're voicing frustration and criticism and not putting themselves on the list because they don't want to block themselves out of that information. A lot of consumers are not getting Caller ID because they don't want to prevent emergency calls or 800 calls or other calls coming into their home where that would be blocked. So, there are those trade-offs.

I think if we're talking about gaps in prospective thinking, that's something that I would invite one to think about in terms of state approaches to mandated lists, which I think are going to be zooming down the highway. We have nine states now, Connecticut is considering it, there are other states that are

considering it, Texas turned it down, it could be back on their legislative menu. One of the large states goes down a mandated list highway and they're all going to go, at least in my view, but I think in considering that legislation, consumer choice of what to block and what not to can be done, and I believe the technology would follow that. I think it would allow that to happen.

MS. HARRINGTON-MCBRIDE: Okay.

MR. HILE: How would that technology work?

MR. MORTMAN: I'm not certain that I can answer that, but I do know that people much better than me with those gadgets are working on it, and I believe that we're going to be able to have a solution in the not-too-distant future.

MS. HARRINGTON-MCBRIDE: Okay.

Mallory and then Bob.

MR. DUNCAN: Thank you, Katie. Mallory Duncan, National Retail Federation.

There are a number of issues I guess that are sort of at play at the moment in this round of questioning. I want to just make three points.

First of all, as far as what the FTC can do consistent with its jurisdiction, we at the Retail Federation believe that the rule that was developed five years ago is a very good balance and covers a -- pretty

much the reasonable limits of the Commission's practical abilities, and there's a lot of opportunities within that range. That's number one.

Number two, I had the misfortune of being around when the Telephone Consumer Protection Act was first a gleam in the Congressional eye and worked pretty closely on that. A lot of the concerns we're hearing about holes in the coverage in -- the Telephone Consumer Protection Act, as you know, is incorporated by reference in the Telemarketing Sales Rule at the Commission -- dates back to that.

We argued at the time that if Congress was going to develop a rule, the rule should treat everyone pretty much the same, so there wouldn't be this proliferation or sense that some people were covered and some were not. We were told with completely straight face that Congress would never want to do anything that would upset people's ability to receive fundraising calls, and for a little cover, they added on nonprofits, as well. So, a lot of the problems that we're seeing now I think date back to the structure of the first underlying bill.

Then the third point has to do with the state law effects, and this is really directed to Keith. There are a lot of costs associated with complying with

these state laws on top of the individual company-by-company do-not-call lists, and what I'm hearing from some of our companies is that it's -- they are actually making the cost-benefit trade-off. It's more cost-efficient to simply put the names in when they come in from the state and not do updating in the sense of taking names out, but they're only adding more names onto it. It's just cheaper to do that.

Now, everyone -- but see, what the consequences of that are, since as you check people by name, by account number and by phone number, and any time you see a reference to any one of those, you remove them from the list, and a name might stay in there ten years under the Commission's rule, but as a practical matter it's permanent in many of these company's files, and people are moving 20 percent per year, whole batches of numbers are being taken out of circulation and simply aren't going to be marketed to in the future, regardless of whether those people want to receive calls or not.

So, there is a problem of people who might want to receive information who are not receiving information just because the cost of enforcing under the current mechanisms. So, I think sometimes we focus too much on the costs -- the direct costs of the regulation and don't look at the unintended consequences of a

regulation, and I think that ought to be involved in some of the discussions going on here.

MS. HARRINGTON-MCBRIDE: Okay, Bob, then I think Wanda has some comments, and then I haven't forgotten the rest of you all, I'll be down there in a minute.

MR. BULMASH: There were some questions regarding state enforcement actions. I think Florida has taken some state enforcement actions, and successfully, and our panel member from Kentucky was talking about the exemptions that were so prolific in her state do-not-call list, and I think it's interesting to note that the Florida do-not-call list exempts, of all organizations, newspapers, which are one of the most voracious telemarketing entities in the country.

There's also concern for me, and I hope for the FTC, in the area of nonprofit sales solicitations or solicitation calls to homes. In the arena of fraud, it is legal but yet ethically fraudulent to receive a call and donate money to an organization that purports to be a nonprofit. Let's take a look at, for example, the National Association of Sheriffs Deputies, Police Underwriters, whatever that may be. There are organizations out there that specialize in nonprofit calls of this nature, and what they do is they call people, and they generate revenue through these

nonprofit solicitations. The amount of revenue generated -- let's say I would give a dollar to an organization that called me, purportedly for the sheriff or police, but actually it was some telemarketing service agency.

If I were to give a dollar, only about 15 percent of that dollar would actually go to the organization which I had thought I was going -- it was going to go to. Eighty-five percent would actually go --

MS. HARRINGTON-MCBRIDE: I'm sorry, what's the do-not-call implication?

MR. BULMASH: The do-not-call -- we're talking about fraud here and that people don't want to be called -- you know, when I'm called from the shower, when I'm called from dinner for a solicitation and when that solicitor knows that the most likely result of their summoning me to the phone will be only to disturb me, I don't care if it's a nonprofit, a survey or a sales solicitation call. The fact that they have a higher right of free speech pales before my fundamental right to be left alone by those I seek not to associate with in my home, and I feel strongly that a national do-not-call database should include the options of getting off of sales, survey and fundraising calls. I

feel very strongly about that.

MS. HARRINGTON-MCBRIDE: Okay. I think we're going to get to that a little bit later in the agenda, so I don't want to cut you off, but there will be an opportunity for that, and as you've seen already, there's a high standard set for us to finish on time, and I will not violate that.

MS. HARRINGTON: But I am going to make that hard, because I have a comment in response to that.

MS. HARRINGTON-MCBRIDE: Okay.

MS. HARRINGTON: Just in response to that, the FTC has led two very large enforcement sweeps targeting deceptive telemarketing practices by those who misrepresent their affiliation with nonprofits, including police, sheriffs and that sort of thing. There's a difference between misrepresenting who you are and where the money goes and having a contract that permits or contemplates what you might think of as a rather skewed apportionment of the revenues from the fundraising activity.

The Supreme Court has spoken pretty clearly about the inability of government to reach the latter problem with regulation, but on the former, our enforcement work targeting what we call badge fraud, bogus fundraising, has been very aggressive, and, in

fact, those two sweeps are the only enforcement sweeps of the many that we have organized in which each and every one of the states has participated with the FTC in enforcement work. So, it's a very serious problem that we take seriously and have done a lot of enforcement on.

MR. BULMASH: Well, my concern was what was not necessarily illegal. My concern was what falls into the legal type of fundraising --

MS. HARRINGTON: Right.

MR. BULMASH: -- which misleads people.

MS. HARRINGTON: Which is not just legal but enshrined --

MR. BULMASH: Essentially, yes.

MS. HARRINGTON: -- by the Supreme Court.

MS. HARRINGTON-MCBRIDE: Okay, Wanda?

MS. DELAPLANE: Back to the question about enforcement actions, that in addition to our state doing some things and Florida, I know that Georgia has also done some actions, and I'll see if I can get some of the details about that if you would want them.

MS. HARRINGTON-MCBRIDE: That would be great.

MS. DELAPLANE: Okay. Also, I want to make clear to Linda that the driving force, as I see it, as I have had it expressed to me, for the state do-not-call

list is the demands of the citizens to be left alone, that the demands of the citizens -- they want a choice in just besides what companies they do business with, they also want the option to be able to sit down at dinner and get through a full meal without a call coming in, that that's what citizens are telling us.

And with regard to consumer choice and what companies they do business with, consumers do have a choice if they're on a do-not-call list. They have the choice of picking up the telephone and dialing a number and placing a call to that company. Being placed on a do-not-call list does not forbid a consumer from doing business with a company. They've got the right to do business with any company they want by picking up the phone and calling.

MS. HARRINGTON-MCBRIDE: All right, Joyce?

MS. BRUNDAGE: Yes, Joyce Brundage, and I'm with the National Federation of Nonprofits, and I just wanted to speak a little to some of the comments that have been made about nonprofit fundraising and the exemption which nonprofits have. Although I was not a party to the original rulemaking, I just wanted to bring up some of the reasons why those exemptions came about, and, you know, there were some very good ones.

Nonprofits are, indeed, in a very special

circumstance from a private company. They are dependent upon the good will of the general populace to support their efforts, and their fundraising activities very often are going to be going out to the grass roots, to a wide spectrum of the population.

A set of regulations which nonprofits are accountable for has to do with the percentage of -- well, the amount of -- the percentage, excuse me, their fundraising cost ratios, and if they are spending too much money on raising money, then this can cost them their nonprofit status within many states. So, I don't think that, you know, to look at what nonprofits are doing and saying that they're not regulated, they are very carefully regulated at this point.

And telemarketing has become a very important aspect or telefundraising to their ability to raise money and to do it in a very cost-effective manner. They want to be good stewards of the money they raise, and that includes raising money in a cost-effective manner. So, I think that a big concern here is with the do-not-call list.

Many nonprofits are very small organizations. Just as it's very expensive for DMA to maintain their list, you can imagine what the expense would be for a nonprofit organization to do this. Most of the --

MS. HARRINGTON: Can I ask you a question, Joyce?

MS. BRUNDAGE: Certainly.

MS. HARRINGTON: What, if anything, does your group do to require its members to monitor the telemarketing that is done on their behalf? I would note, for example, that the Magazine Publishers have adopted very strict guidelines for their members that require their members to be much more involved than they might have been historically in overseeing telemarketing that is done on their behalf.

I know personally, I get a lot of calls from nonprofits, and even when I ask not to get any more calls, I keep getting them, and I'm wondering whether those nonprofit organizations are choosing to not respect my wish or whether they're not paying attention to what the service bureaus that they've hired are doing.

Do you have any rules on that for your members and do you have any information about what your members do to police telemarketing?

MS. BRUNDAGE: Yes, and not only for this organization, but there are a number of nonprofit organizations who also have rules, and -- or guidelines, however you want to phrase that, but yes, for this

organization, there is a requirement to keep a do-not-call list, which nonprofits attempt to do. It's a very difficult challenge for us, just as I'm sure it is for industry groups, as well.

One of the things that happens with all membership lists, and it's why you sometimes get duplicate pieces of mail and duplicate phone calls, unfortunately, is that you may give to the organization, do one solicitation form, and give to them again through another, and your name may be slightly -- may be spelled a little different in one instance, your address may be spelled a little different in another instance, and when these lists are merged together, sometimes those things aren't caught. So, you may end up with two memberships to an organization rather than one.

Then you have this problem of the do-not-call penalties going into play. How do you weed that out effectively, especially if you're a nonprofit? I mean, how much of your overall budget do you put into that as opposed to performing the very programs that you may be set up to perform?

MS. HARRINGTON: I can tell you, I have had the experience personally of telling one nonprofit organization that I support on six different occasions, put me on the do-not-call list, and I told them that if

they want money from me, they need to send me information in the mail, and it's an organization that I believe in deeply, but I have stopped supporting it because of its nonadherence.

On the other hand, I can tell you that on the occasion -- on the rare occasion in the last five years when I've gotten a phone call from someone calling on the phone to say, Congratulations, Eileen, you have won, blah-blah, we have sued them, because they are subject to our jurisdiction.

So, I'm very -- personally very concerned about what's happening with the nonprofits and their compliance with the do-not-call requests of consumers based on my own personal experience.

MR. HILE: Don't they have a concern about killing the goose who laid the golden egg?

MS. BRUNDAGE: Oh, most definitely, and this is why they all have do-not-call lists, but it is very difficult sometimes to determine -- you know, you may be on their overall membership list more than once, which is where these duplicate calls keep coming into play, and that's part of the dilemma, is to -- is keeping those membership lists as, you know, as clean, if you will, as possible to make sure that someone's name is only on it once. It's a very, very big challenge for a

nonprofit organization.

MS. HARRINGTON-MCBRIDE: All right, Michael?
You've been patient, thank you.

MR. PASHBY: Thank you, I have been. I'm glad
you noticed.

A couple of people have been talking about the
internet and discussing the internet as if it's going to
be the panacea for the future. I don't think it will be
in the end. I think that the internet is obviously a
passive medium. It requires the consumer to go to a
site to find information. Information has been
available to consumers on every topic before the
internet. They just had to spend a little bit more time
and a little bit more effort finding that information.

Telephone calls, as with any other media, are a
sales promotion. We have to bring our products to the
consumer. The consumer doesn't know they want a product
until they're offered it. Consumers never go --

MS. HARRINGTON-MCBRIDE: Are you sure about
that? I'm often quite certain of what I want before I
go shopping. I don't know if that's correct.

MR. PASHBY: You don't know about the new
products that are offered until they are offered to
you. When Wanda says that a consumer is going to call
the companies, I mean, that is wishful thinking if she

believes that consumers will call up every company and ask what new products they are bringing out. We call it advertising, and it is advertising, whether it's a telephone call or advertising on television, and what we seem to be doing here is discussing whether we should advertise at all.

Let me bring up one more thing here, as well, and that is on the selective suppression of names, and I'm very concerned about that, as well. We believe that company-by-company suppression is exactly the way to go. Selective suppression, I don't know how that's going to work. How do we select how we break out these industries? Is it I don't want magazines to be offered to people, or is it I don't want golf magazines to be offered to people, or is it I don't want Golf Digest to be offered?

I mean, how deep do we go in this? Because the consumer says I don't want magazines to be offered, but of course I want to have my own magazines offered to me. I want Golf Digest and I want the Architectural Digest, but don't offer me the rest. So, where do you break down and where do you stop with the selection?

MS. HARRINGTON: Michael, why not give consumers, then, the full range of choices? For those consumers --

MR. PASHBY: They have that already. They have that already with company-by-company suppression.

MS. HARRINGTON: But what about the consumer who wants no telemarketing calls, who knows that for a certainty? Why not provide for an array of options so that if a consumer wants to opt out completely, he or she can do that? If the consumer --

MR. PASHBY: They can do that with the TCP.

MS. HARRINGTON: Right, but why not incorporate that range of choices into the law?

MR. SHERMAN: How do you administer that?

MR. PASHBY: Who would administer that?

MR. SHERMAN: If I can jump in for a minute, DMA attempted a selective upnet, and it was an uproar for consumers as well as the industry. There was no way to provide the categories in an acceptable way. Sometimes it's the medium, sometimes it's the product, sometimes it's the service, sometimes it's a single product line within a company. It was -- it was absolutely -- it was impossible, and we tried it, we tested it, and if somebody can come up with it and then come up with somebody who's going to fund it and administer it, I wish everybody luck. Selective opt-out, even finer than company opt-out, would be great, but I'm not sure that -- that the theory practices divergence.

MR. HILE: How would a selective opt-out and selective opt back in work? I don't want any telemarketing calls except I will accept some from Golf Digest or I will accept some from this company?

MR. SHERMAN: You are not going to get DMA to discuss opt-in.

MS. HARRINGTON: Okay.

MR. SHERMAN: And you are not going to get a lot of federal judges who consider it a violation of the First Amendment to discuss it either, but...

MR. ANDERSON: Well, but Bob, just to follow up for a minute, if I might, I mean, what about having a combination of the "I don't want any" calls with the company-by-company list that exists now? I mean, consumers then do have the choice to either say I don't want anything or -- yeah, I don't want to put myself on the no calls at all list, but then I call companies X, Y and Z and say I don't want to hear from you. I mean, I had the impression this morning that you didn't think that a viable option, and I'm not sure why.

MR. SHERMAN: Well, to some degree you have that now. You've got the Telemarketing Sales Rule, which is company specific, and you've got DMA's telephone preference service or I don't want anything.

MR. ANDERSON: And you've got the state laws.

MR. SHERMAN: And you have got the state laws, and based on exemption, I'm not exactly sure what they cover and don't cover and why, but -- and plus you've got state laws. Well, why don't we add a couple of more layers on and make it just impossible to figure out who to call, who not to call and when? It -- we need some uniform system. The Telemarketing Sales Rule did that, we thought. Now we realize there are conceivable gaps in the Telemarketing Sales Rule, and one suggestion was get the law enforcement agencies that do have jurisdiction over the gaps to pass a companion rule, and so everybody's covered. Maybe the states can do that.

As, you know, Linda suggested, and I don't disagree with, if the states use their authority to fill the gaps and didn't both duplicate and create undue burden, I mean, once you have 50 state lists, you have 50 national lists, and the reason is because that's the way telemarketers conduct their business. They don't just sell into one state at a time. They sell their goods and services nationally. So, you can't say, Well, on Tuesday we're just going to run our list past Arizona. It just doesn't work that way. So, essentially we're heading towards 50 national lists, and that really is a burden.

MR. ANDERSON: Okay, but I guess what I'm

wondering about is what if -- and I'm not promoting this and I'm not a lawyer, so I can say things that my lawyer colleagues might cringe at, but I mean what if there was a national list -- would there be a real problem if there was the national list, but consumers who wanted to receive some calls, wanted to be selective, still had the option of doing company by company? I mean, is that a viable option?

MR. SHERMAN: In my view, a national list without preemption or -- pardon me for bringing up the word -- is not viable. It's 51 national lists instead of the 50 we're marching towards. I don't know how you deal with the existing business relationship. Somebody who's a subscriber to Golf Magazine absolutely wants to be called and told that their subscription is about to run out if you don't renew.

Now, if they -- if it's that person who also said, I don't want to hear from anybody else, I mean, is there going to be an exemption for existing business relationship? It's got to be thought through, and I think at the bottom of it is, without preemption -- in quotes -- and I mean without preventing duplication and overlap and inconsistency, my answer to you has to be it's not viable.

MR. ANDERSON: Okay, let me presume preemption,

because I'm the only one who can do that, because the lawyers would have real heartburn --

MS. HARRINGTON-MCBRIDE: If I might do this, Keith, one commercial announcement and then a hopeful message, too. The commercial announcement is that we were lucky to have coffee brought to us this morning, and that kept us going through the morning session. There will be coffee and cookies at the break. So, I think that maybe our energy level will be high enough at that point that we should tackle this issue of the national no-call list in the brainstorming session.

I don't want to cut off meaningful discussion, but I do feel like we should probably handle this, the regulatory approaches, and talk about what we currently have before we move on, and I know that many of you have been waiting a while, so I don't want to leave you the impression that I have not seen your cards. So, if that's all right, we'll postpone that and sugar up before we discuss it.

Jason?

MR. CATLETT: Thanks very much.

I'd like to start with the suggestion on data gathering, because we don't have a lot of figures on how many people actually want telemarketing calls, and a source that I think you could look at which would be

very accurate comes from Axiom Corporation. They recently released a product called -- including a feature called Call Friendly Flags, where they indicate, in addition to selling a telephone number, they indicate how amenable a given telephone number is to receiving telemarketing calls.

Now, my guess is that this wouldn't be a large majority, but it would be interesting to ask Axiom to provide some summary statistics of those numbers without revealing any proprietary information. They have a ranking, I believe, a 1 through 7 scale.

The second thing I would like to respond to is this concern from David that maybe people will say I don't want to be on a do-not-call list without considering the things that they might be walking away from. Well, when I make a personal statement, and this is actually true, I never want to receive another telemarketing call in my life, that is true, and I think any marketer should respect that, and even though maybe there might be some conceivable telemarketing call that I might want -- I might actually want to get, I should be able to say that, and there should be some mechanism that enforces that.

Now, thirdly, and I'll just put this on the table quickly, because as you said, we are going to talk

about the brainstorming session later, but let me put out as a straw man this suggestion. The FTC could put up on its website a page that a consumer can enter the phone number in, and that would become part of a national do-not-call list, and the FTC could simply set up a small program to sort those lists each night and publish on the FTC's website for any telemarketer to download a list sorted by area code of the numbers that are not to be called.

Now, there are some issues to be worked out there, but the principle is fairly simple. It's not an expensive exercise. Why not do that? And I put that out for discussion in the brainstorming session.

MS. HARRINGTON-MCBRIDE: I will likely need to reserve some of the cookies for other colleagues not in attendance if that comes into play, but we will tackle that after the break.

Susan, I think you've been waiting patiently. I think everyone else gave up, unless your cards have fallen down.

MS. GRANT: Susan Grant, National Consumers League.

It's kind of ironic, because I think that actually it's the success of the telemarketing industry that has caused the demand for things like state

do-not-call lists, and as a former state regulator, I have to say that it's not only states' rights but their obligations to respond to the demands of their constituents, and people clearly want to reduce the number, if not eliminate completely, of telemarketing calls that they get.

So, I think that it's wrong to try to go down the road of limiting what the states can do or preempting them. I think that in the brainstorming session we need to think of how we can reduce the demand, the consumer demand, for these blanket prescriptions that the industry finds troubling in such a way as to give consumers what they really want here.

MS. HARRINGTON-MCBRIDE: Okay, all right. I think -- Gordon, I'm sorry.

MR. MCKENNA: I think I have been the most patient.

MS. HARRINGTON-MCBRIDE: And your patience is noted for the record, thank you.

MR. MCKENNA: If you will indulge me just for a minute, I think that some at this table would like to see our industry out of business based on what I'm listening to, and I would like to point out a few things that will give you a little information.

Are you all aware that without us, your

unemployment rate would be 7.2 in the United States? Are you aware that most of your states, where you're from, encourage us as an industry to come and bring jobs to your cities, where the factories have left, that we have come in, created jobs, allowed people to live in their homes? And here you are trying to put the industry out of business.

Why don't you tell those people who will be unemployed in that small town in Texas or in Oklahoma or Nebraska, wherever it may be. Wanda isn't aware, I think she was shocked when I told her that your state worked very hard for me to invest \$5 million in Kentucky to create jobs. It just happens that's an inbound center, but it's still -- we still have outbound work. They worked very hard at getting us in there.

When you refer to telemarketing, I would prefer that you call the unethical telemarketing, call it telefraud. It's not telemarketing, it's fraud, telefraud. Please don't refer -- I am proud of what I do. I have my college degree in marketing. We have MBAs, Ph.D.s working in our industry. We actually have college courses now that specialize in the telemarketing industry. We like to be proud of our business, and I'm sorry to say that the 5.4 million people in 1999 that worked in this industry are proud of what they do, soon

to be 6 million according to the growth rates, those 6 million people want to hold their head high. Please don't forget about the people that do live in this country that do enjoy the benefits and services of telemarketing.

MS. HARRINGTON-MCBRIDE: Well, and I think --

MR. MCKENNA: And Eileen, I would like to have your telephone number.

MS. HARRINGTON-MCBRIDE: Well, I think why we're here today is really to sit down and to have as many interested parties as we can around the table, to have a fair airing of where we are specifically on this do-not-call issue, and we will certainly continue that throughout the rulemaking. Our purpose is obviously not to vilify an entire marketing practice, and if that is the impression you take, I'm sorry. I have not gotten that impression, but I hope that we can maybe in the further debate --

MR. MCKENNA: This is my first hearing, I have never been around government before to listen to the issues, and just for a little guy down in Texas, it sure doesn't sound that way.

MS. GRANT: He's not a survivor yet.

MS. HARRINGTON-MCBRIDE: No, well, we will get you a new teacher. One thing I might ask also, you

know, you hadn't specifically responded to this, but I'd be interested in your perspective sort of on the burden issue of the no-call/do-not-call, the overlap of that. Do you have any input on that?

MR. MCKENNA: We used to focus on training our people to sell. We focus on regulations now, because if we make -- which we have, thank Heavens you all haven't caught them -- but if we make a mistake in our IT department, we make a mistake in our training, technically we have a very, very large business, and technically you could put us out of business.

MS. HARRINGTON-MCBRIDE: Well, certainly any data that you have on that would be helpful, and that goes out to everyone, as well, that that will really help us focus, and we hope that this discussion will help everyone focus their comments.

Eileen?

MS. HARRINGTON: I think that in the initial rulemaking, and the survivors among you can attest to this, that there was great concern that either the FTC or the states would go off half-cocked in enforcing the Telemarketing Sales Rule against legitimate businesses that make inadvertent errors in ways that don't really cause an injury, but that there would be kind of a "gotcha" ethic, and I don't think that that -- in fact,

not only do I not think, but I can assure you that that hasn't been the case, that the hundreds and hundreds of enforcement actions that have been brought by the states and the FTC under the Telemarketing Sales Rule have been directed toward those who are making material misrepresentations and injure consumers and you by doing that. So, the focus here really has been on the unethical, fraudulent operator.

At the same time, the Congress directed us to include in the rule some additional provisions. One concerns the right of consumers to be free from calls if they ask the specific company, specific marketer, not to call them again. Another concerns calling hours. There's another general prohibition against other abusive sorts of practices and on some specific practices.

We're really interested here in finding out, as we begin our rule review, what's changed over the last almost five years. One thing -- and taking a look at that information and other information to say does the rule need to change? One of the things that has changed is the experi -- is that we now have experience with a national do-not-call regimen, and we're asking is it working.

Another thing that's changed is the technology.

We know that in your industry there are different and new technologies that are available. Does that make a difference with regard to the rule and specifically on this issue? So, these are the kinds of questions that we ask here routinely about our rules, and if, for example, it is your experience that you used to train to sell and now you're training only for compliance, then you should tell us that, and you should tell us what the burdens of compliance are in real dollar amounts, because the FTC cares about that very much.

So, we welcome you, and I think you'll find that the more you put into the record, the more effort you put into this proceeding, the more satisfied you'll feel with the final result. And I don't give out my phone number.

MR. MORTMAN: We could block it.

MS. HARRINGTON-MCBRIDE: Okay, Tim, I see your card up.

MR. PHILLIPS: Yes, I have two quick questions. One is a general question to the industry, and I think it's one that I'd like -- you know, I don't have to have answers now, but without reliance on what the law says, does a consumer have a -- you know, maybe call it a moral right, a common law right, whatever, does a consumer have a right not to be called at home? If they

have decided I do not want to be called, I want to forego my opportunities for whatever they're -- for whatever reason the telemarketing sales reps may call me, I want to forego those opportunities, and I don't want to be called, is there a right there, whether it's from society or whatever?

And the next question -- and I almost asked this earlier -- is DMA getting out of the business with respect to how expensive your maintaining the list is becoming? You've mentioned that a couple times, and I don't know whether the question begs or not, but it seems like your --

MR. SHERMAN: No, right now DMA has no intention of getting out of the business. It was to make the point, because it was in the agenda, that to comply with the rule or in our case to volunteer to go beyond the rule has an expense attached to it. There could come a point where the expense is intolerable, and I wanted everybody to know that, including if the government or some other entity decides to take on some list, they've got to know that it doesn't come cheaply, but right now there is no intention for DMA to get out of the business that I'm aware of.

MR. MCKENNA: And I don't mind addressing his issue, does the consumer have the right. I think the

consumer always has that right. This is a free country. If you don't want to be called, you shouldn't be called. I don't like to get calls either, and most of the time I hang up. I don't know why everyone thinks that's so funny, but I'm a consumer just like everyone else, but I have purchased some things over the telephone, a newspaper, a long distance service, add-on features for Southwestern Bell, but I hang up on people that call me from -- for aluminum siding and I have a brick home. That's just bad marketing. I mean, it's -- I think we all have that right to not have a call come in.

MS. HARRINGTON-MCBRIDE: All right.

Are there any further thoughts or data to be shared today in addition obviously to what will be sent in in paper form or electronically about the regulatory schemes that we currently operate under?

All right, well, then I have the pleasure to tell you that thanks to the Electronic Retailing Association, we have both coffee and cookies and I believe some form of pound cake to cheer us through the next several minutes. I think if we break now and we come back and start right away at ten of 3:00, we will be in good shape to get through the rest of the agenda. It sounds like there is a lot of interest in the

brainstorm, so there will be plenty of time for that.

Actually, let me make a couple of announcements. Check the message board for messages, some have been posted, and also, if there are any members of the public, folks who are not here at the moment but who would like to make a comment during the open Mike session, we have three-by-five index cards out on the registration table, if you would fill out your name and sort of a -- that you would like to make a comment, we will collect those and make that opportunity available from 4:00 on.

Thank you.

(A brief recess was taken.)

BRAINSTORMING SESSION -- WHAT'S NEXT?

MS. HARRINGTON: Okay, we're back. Thank you to the Electronic Retail Association. How about it?

(Applause.)

MS. HARRINGTON: Now we're onto brainstorming, and I'm sure the very notion of a federal regulatory agency engaging in brainstorming in a regulatory context strikes fear in the hearts of many, but we really want you to brainstorm here, not us. We've thrown out some questions.

Now, I think that in the brainstorming session we want to take off the table some thoughts that are

legitimate, valid and would otherwise be expressed, one being everything is working fine, so let's, you know, let's not do anything. We appreciate the possibility of that, and I think that -- particularly, Bob, that you've made that point very well. And by saying let's not have that point again, I don't mean to suggest that there's any predisposition here to do anything other than retain the status quo.

I think what we want to look at is, you know, the full range of other alternatives that might exist and encourage some discussion about those in terms of burdens, costs, what's doable, what's not, and one -- let me begin with a question coming directly out of the last discussion, and that is this:

If you believe it true that you are headed toward 50 state do-not-call lists, then what do you think the alternative is to that, if any? Is there a better alternative?

So, let's throw it open here. Does that mean, for example, if we're headed toward 50 lists, should there be a national list? If so, should it be mandatory or a volunteer -- you know, some sort of safe harbor kind of thing or, you know, what would work?

David?

MR. MORTMAN: Well, the question is why are we

heading towards a 50-state mandatory do-not-call list if we are, and I think we are down that path. The reason is because the volume of consumer complaints is rising. Something is not happening that should be happening. No one wants to decrease the ability for telemarketers to market and get to consumers that they want to get to and to consumers who want them, but what's actually happening is that we're getting to consumers who don't want to be called either in a total sense or in a company-by-company sense or in a specialized sense. So, I think there are sort of practical things to talk about and there are some theoretical things to talk about.

Practically, there are some things that we should address that can help the telemarketers. One is the ten-year rule, as Mallory raised, is probably not right, in that turnover of numbers exists, and we shouldn't lock in such an extended period of time where there is not an ability to re-audit or recertify or reverify the numbers that people still have, so that we're not blocking inadvertently numbers that no longer represent that consumer, that that number now represents new people who may want consumer information, and it would free up a body of calls in the marketplace that become permanent.

Second, it seems to me that --

MS. HARRINGTON: Let me ask a question. Has anybody addressed to the FCC, which is the source of the ten-year rule, the concern that's been raised here?

MR. SHERMAN: The ten years is a result of the concern. Originally it was in perpetuity.

MR. MORTMAN: The specific answer from my company is we are just becoming aware of the magnitude of what that problem is, and in our view of the rules that apply to the marketplace, that is probably an unfair rule for telemarketing purposes, and it's unfair because statistically, as people move and leave that number, consumers -- different consumers now have that number, and they don't even -- they are not even aware that they're blocked. So, they don't even have the right to complain yet. So, there's a practical answer there.

The second thing where I think there's just general consensus around the table, from every point of view, is that consumer awareness is not where it should be, consumer education is not where it should be, telemarketing compliance is not where it should be, and there is a need for some instrument that permits effective measurement of training and certification of marketing calls that are being made.

That can be industry sponsored, it can be

government sponsored, but there has to be a recognition that the certification and training procedures are not the length and breadth they should be. I'm certain the top call centers, Gordon's call centers and whatnot, are doing everything conceivably correct that they can do, but there is obviously a large portion that are not doing it, because otherwise the complaints would be reduced.

On the other side, I think that there is some concern whether or not you can have specialized do-not-call requests. It doesn't replace the overall call. It seems to me you have a checklist of what you can or can't do. But it seems to me that ought to be looked into. Certainly we're looking into it in terms of my company, whether it's the SIC codes or whether it's other industry codes that can be used, but there are standard barometers of choices that can be made that are recognized in a variety of different form-making that can be used as a start. Certainly that's where we're starting.

So, I think that there are areas that we can legitimately go into that both on a practical sense correct and strengthen areas of legislation that we presently have and identify for the industry areas that we can go in.

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 legislation 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 additional 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

there are a couple who just said we won't give you our lists.

Not to mention that DMA doesn't want the liability or responsibility that if the list isn't current or somebody just missed it by a quarter or by three days, that it's our fault that somebody violates the law. So, the truth is, we don't want the list under the current circumstances. We don't want the liability of maintaining a law-enforced list. What we do through self-regulation is one thing, but we are not willing to take on legal liability for screwing up some state's list.

MS. HARRINGTON: Right, I understand.

I'm just wondering if anybody has any idea whether the consumers who are signing up for the state do-not-call lists and paying money to do that are the same consumers who request to be included in the telephone preference service list for free, or are these completely different groups of people? Does anybody have anything on that? How much overlap is there? Any of the people from -- okay, can you come up here and answer that?

MS. CLECKNER: If you don't mind me jumping in, it's Annette Cleckner again from MCI Worldcom. When we buy state lists, we're seeing some amount of overlap,

and without giving --

MS. HARRINGTON: Between those lists and the DMA list?

MS. CLECKNER: I'm sorry, let me specify more clearly, with our own company do-not-call list and the state list, we're seeing -- and we do incorporate the TPS list into our list, so there is some generality there, too.

MS. HARRINGTON: How much overlap?

MS. CLECKNER: At least a third, if not more.

MS. HARRINGTON: Okay.

MS. CLECKNER: So, I think that indicates that people who are particularly privacy sensitive have a certain level of information about how to get their names off the list.

MR. CATLETT: Eileen? Sorry.

MS. HARRINGTON: Yes, Jason?

MR. CATLETT: Just to answer that question again, and at the risk of sounding like a commercial for Axiom Corporation, they also provide information about several states' do-not-call flag status. So, again, ask them for some summary statistics, it may be what you need.

MS. HARRINGTON: Thank you, good suggestion.
Susan?

MS. GRANT: Whether or not a federal telemarketing do-not-call list is ever developed, it seems to me that companies can do a lot more to find out what consumers want to do. I am a very well-educated consumer, but nine times out of ten, when I get a telemarketing call from a company that I am not interested in dealing with, I forget to say, "Please put me on your do-not-call list," and just say, "I'm not interested, have a nice day," and hang up.

I don't think that I am atypical, and in the absence of any scientific data to support this theory, let me say that I think that the people that are on the various lists already are people who have made extra efforts to do that, but there are probably a lot more people out there who are complaining, who are not on the lists, because they don't realize or don't think to assert their do-not-call rights.

I think that people would be astounded and gratified if they were asked as a telemarketer, without their having to remember to say it, would you like to be put on our do-not-call list, and I think it could be done in such a way as to not be a "kill" message necessarily, and it could be towards the end of the conversation when it's pretty clear that the consumer is not interested, and I think that it would be helpful,

because it would reduce the number of complaints, I believe, and the pressure therefore for other alternatives to deal with the problem.

I think that if companies found out that consumers wanted to be put on their do-not-call list and then shot out to them a postcard confirming you've been put on our do-not-call list, here's our name and address, so the consumer would be able to keep that for documentation, that would be helpful, and I think that if companies are concerned about the possibility of people changing and no longer being the same people at those numbers, that one easy solution to that would be to mail a postcard every couple of years saying, the occupant of this house or apartment at this number is on our do-not-call list, do you want to receive calls from us or not? If you're interested in being taken off the list, call this toll-free number or whatever.

So, I really think that the burden here to reduce the problem, whatever the problem might be, or at least the perception that there's a problem is on the industry and that the industry could do some things that would alleviate the problem and really turn around people's perceptions, which I think is at least part of the problem here.

MS. HARRINGTON: Okay, Kathy, and I understand

that you may have some information on this issue or that -- and that -- even some scripts?

MS. TORLUCCI: Yes.

MS. HARRINGTON: Can you use the mike?

MS. TORLUCCI: Hello, Kathy Torlucci with KTW Consulting.

What I will be providing is just the internal procedures for telemarketing service work, what is it that they put in place. Part of that procedure will include scripting, and to piggyback on what she just mentioned, Susan, it actually addresses the concern of the consumer, do they wish to be on XYZ Company's do-not-call list.

If, in fact, they say I don't want any telemarketing calls, why not provide the DMA's address and telephone number? This information is provided. To add onto that, if a customer were to say, you know, where are you calling from, what is your address, what is your company name, this information is all in some of the scripts, just to tie --

MS. HARRINGTON: And real telemarketing companies are actually having their people say, "Do you want to be put on our do-not-call list?"

MS. TORLUCCI: They ask the question and they will say it in the script as part of the procedure.

MS. HARRINGTON: What's the response on that been?

MS. TORLUCCI: Some customers just don't want to be telemarketed by the company --

MS. HARRINGTON: But when the telemarketer says, "Do you wish to be placed on a do-not-call list," do you have any breakdown on what the responses are?

MS. TORLUCCI: Okay, what the script would probably lead into is, Mr. or Mrs. Jones, if you would like to be placed on XYZ Company's do-not-call list, this would mean that you would not receive any further solicitation from this company, is that what you would like?

MS. HARRINGTON: And --

MS. TORLUCCI: Or is that your request?

MS. HARRINGTON: -- do you have any --

MR. PASHBY: But is that in response to something that the consumer has said or is that in the lead-on script?

MS. TORLUCCI: It's what they say.

MR. PASHBY: But it's in response to something the consumer says; it's not offered by the telemarketer.

MS. TORLUCCI: That's right.

MS. HARRINGTON: And what is it that the

consumer says that prompts that response?

MS. TORLUCCI: If the consumer says, "I do not wish to be called, put me on your do-not-call list."

MS. HARRINGTON: Actually, if a consumer says that, I don't know why you have to ask any more questions.

MS. TORLUCCI: Well, what they do is they are actually confirming that they do not want to be put on the do-not-call list for XYZ Company, that's what they are doing.

MS. HARRINGTON: I can tell you that if someone said that to me after I said please put me on your do-not-call list, my polite response is, "Can't you hear?"

MR. MORTMAN: What happens if the consumer hangs up before they say that? Then it's not --

MS. TORLUCCI: Well, it's to confirm, it's to confirm that is truly what the customer would like, and then, if they would like to be put on -- or have their information sent to the DMA, then that information is also provided so that the customer, the consumer, can write to the DMA or call them and be placed on the telephone preference service listing. So, that is -- that is what's happening.

MS. HARRINGTON: As a sample of one, I'd cut the

first question and go right to the DMA information,
but --

MS. TORLUCCI: Go right to it, right, but that's what they do. They just want to reconfirm -- sorry, but they just want to reconfirm the customer's preference, because what I'm hearing is we're really not certain what the customer is asking. Are they asking not to be called for any telemarketing calls, or is it they don't want to be solicited by XYZ Company? So, there is the confirmation within the script.

MS. HARRINGTON: Um-hum, okay.

MR. ANDERSON: But I think Allen hits the nail on the head, and actually it's been hit on the head before. I mean, when I get telemarketing calls, I just said I'm not interested and I hang up. Like Susan, I don't remember to say don't put me on the list, and Allen's question --

MS. HARRINGTON: No, do, do put me on the list.

MR. ANDERSON: Maybe that's why I'm getting the calls, but also, if someone goes into your script and says I don't want any more calls, put me on your do-not-call list, click, do they get -- are they on the list or do you -- does your company say, Oh, well, I didn't get the confirmation, and then --

MS. TORLUCCI: No, at that point, as I mentioned

earlier, they would be dispositioned as a do-not-call, okay, and then that would be sent on to the client.

MR. ANDERSON: Can you translate that, dispositioned as --

MS. TORLUCCI: Dispositioned as a code -- I'm sorry, the record would be dispositioned as maybe a code 10. That code 10 would represent a do-not-call. That record would then be placed on a do-not-call file, which would then be added to the do-not-call file in the telemarketing service call center as well as being sent off to the client.

MR. MORTMAN: That takes a rather --

MS. TORLUCCI: And so that customer would not be called again. That's what would happen.

MS. HARRINGTON: Is there more that could be done in terms of industry-led do-not-call efforts? That is, we have the DMA mail/telephone preference service --

MR. SHERMAN: And e-mail.

MS. HARRINGTON: -- and e-mail preference service beginning today --

MR. SHERMAN: Yesterday. We were listed in The Times just above the -- (inaudible).

MS. HARRINGTON: You know, the FTC and its staff have held numerous workshops and discussions and hearings about things internet, and one thing that we

have heard repeatedly is that with respect to marketing and advertising, one great thing about the internet is that it provides tremendous consumer sovereignty. It -- you know, consumers are able to decide what they want to see when they want to see it. The privacy discussions about internet marketing and advertising I think are premised on some notion that consumers ought to have that kind of sovereignty.

Does it concern you folks in the telemarketing -- you folks in the direct marketing industry who are extensively involved in telemarketing that you may come to be at a disadvantage if one medium offers a significantly greater degree of sovereignty to consumers than another, or is that -- is that a concern, number one? Number two, is there more -- if the states are moving to adopt laws, is there more that industry could do on a voluntary basis to bolster the national -- the industry-led national do-not-call effort? I'd be interested in hearing some thoughts on that.

Michael, you look like you want to say something.

MR. PASHBY: Regarding sovereignty of the consumers, you're absolutely right, the consumer does have power over the internet, because they do choose where they're going. The problem for a marketer is how

do you drive people to the sites that you want to drive people to, and no one's figured that out yet. So, advertising on the internet in particular is extremely difficult, unless one -- unless one obviously has a lead on the consumer and can actually place ads on that site based on the consumer's profile. I don't think this is about that.

We don't know how to drive consumers to the internet to the right sites yet. That's the simple answer. No one does. No one knows how to do that right now.

MS. HARRINGTON: Do you have any thoughts on whether there is more that could be done in the way of industry-led do-not-call efforts or anyone?

MR. PASHBY: Well, I think --

MS. HARRINGTON: That is, is there an alternative here to --

MR. PASHBY: Well, look, there's been discussion --

MS. HARRINGTON: -- either 50 state laws or a national law?

MR. PASHBY: Well, let's at least talk about -- cover things that were brought up, that the industry has to or should tell the consumer in the call that they can get on a list. You know, it's on our dollar that those

calls are being made. We're paying for those calls. Making that statement is -- even at 10 cents a minute is going to amount to many millions of dollars over a period of time. And indeed, it is a call killer at any time during that telephone call.

Five years ago or before that, there was a recognition of that, and the fact that we give a telephone number or a telephone number is supposed to be given at some time during the call -- and it's usually at the termination of the call if the consumer is still on there and can hear it, saying if you would like more information, call 1-800-XXX, that is -- that is a recognition that the consumer can call that, have their name taken off, but do we want to really tell the consumer proactively that they can be taken off the list? Not really. I mean, we are in the business of reaching the consumer to offer them products.

MR. MORTMAN: I think --

MS. HARRINGTON: David?

MR. MORTMAN: -- therein lies the conflict that you opened the forum on, and I think that what we've tried to do throughout the day in identifying various issues and addressing that balance wheel is to say several things. One, that that which exists ought to be administered more aggressively in terms of identifying

how to make consumers more aware and how to make telemarketers more aware so that the problem that's being created gets reduced by certifying, by training, by utilizing the do-not-call lists that now exist.

We have said from our company that we are designing and employing systems that automatically block calls in a broader way. It's clear that we have to improve our systems. If you call into a call system to order a product, you have a clear menu of how you're directed, and you can order something within minutes using a directional system. Hit this key, hit this key, hit this key, hit that key. There's absolutely no reason why a disgruntled consumer who doesn't want a call shouldn't be able to hit a key and be able to effectuate that request, instead of going through the tremendous script or menu that now exists.

There are ways that the industry, of which we're all a part, can legitimately address -- certainly it's on -- Michael's right, it's on the industry's dime, but that dime -- first of all, if you're spending a dime, you're spending too much, so we ought to talk about that, but having made that commercial, there ought to be -- there are technological ways to improve the delivery of that service.

What is the whole market of call centers today?

It's the inbound call and providing more and more service, and Gordon is probably over-involved in that. You have to provide that same service to the outbound call and the consumer's demand not to be called, and there are ways to do that, and there are legitimate ways that the industry can address to effectuate that.

I've just suggested a couple as we have sat here today, but I believe that we just can't sit back and say we can't do anything more, we can't -- we can't do it. I mean, it's clear that there are simple ways to effectuate better change.

MS. HARRINGTON: Okay, thank you.

Susan?

MS. GRANT: It seems to me that you can't complain about the proliferation of state do-not-call lists and the possibility of a federal one unless you're willing to do something bold to solve the problem in another way, and I have to remind you that you are choosing to call the consumer rather than solicit their business in some other way, and if it costs some money for you to inform them of their do-not-call right, then I think that that's an appropriate expense for you to go to, and if you don't want to do that, you have other options for how to reach the consumer.

I think that all of us that do consumer

education are familiar with the concept of teachable moment. You can talk to groups of consumers about their rights, but the moment that that information is most effective is when they're in the situation that it applies to, and that's why I think that it would be so effective to tell people at that point that they have the right to be put on your do-not-call list.

I think that the industry would get accolades for doing this. It probably would result in more people asking to be on the list, but I don't think that it would kill the legitimate telemarketing industry. I do think that there are other ways of reaching consumers, and I think that it would change the perception from one of we hate this business, they don't care about our privacy, to, you know, this is spectacular. The one time that I remembered to say -- well, not the one time, but one of the times that I remembered to say put me on your do-not-call list, I was astounded by the telemarketer actually then launching into a whole script telling me about the DMA list, as well, and how I could get on it. I mean, it was fabulous. I was so grateful for the information.

MR. SHERMAN: Probably one of our clients.

MS. GRANT: Probably, but I don't think that Kathleen's solution quite makes it, because I don't know

what triggers that confirmation. I mean, if I say I'm not interested, it doesn't seem to trigger it. If I say -- I'm not even sure if I say I don't like to buy over the telephone whether that triggers it, and so I really think that the specific question should be asked.

MS. HARRINGTON: Okay. Keith, do you have a question?

MR. ANDERSON: Well, just -- I wanted to observe something here. This morning when I asked about incentives to make sure that the thing worked, Mallory gave me the answer, Well, we don't want to call people who don't want to be called, and that should make it work. Now I seem to be hearing Michael saying, Well, we don't want to tell consumers that they can tell us they don't want to be called, because we want to call them anyway. I want to -- I'm just curious about how to reconcile these two answers.

MS. HARRINGTON: Okay, if anyone would like to address that question, we're going to continue calling on people in order, and I would invite you to add to -- to add Keith's question to your remarks.

Kathy?

MS. TORLUCCI: Kathy Torlucci, KTW.

I would just like to add that I believe that as an industry, I think the telemarketing and telemarketers

need to honor and be aware of consumer rights. I think that we need to continue to build professionalism that we've all worked very hard to -- in the industry, and just to add on to what Susan said, I really think that we need to, again, keep people -- make people informed, give them some information, where can they go, what are their rights, help them, and that's the whole professionalism aspect. And I believe that the rule does bring credibility to the telemarketing industry, and I think we need to recognize that.

One thing that was mentioned earlier, and I believe Linda had mentioned it, that -- she had mentioned something about the states maybe coordinating their efforts, and if I just may add this comment. I think that that may be something for the future, because as Robert mentioned, if we have so many states with their own exemptions and their own laws, that it may be something that perhaps a coordinated effort among the states may be able to be worked out, and I would kind of refer back to, if anyone's familiar with the insurance industry and licensing, that has come about. It took a long time, but it has come about, and it was a bear. So, it's some food for thought for the future.

MS. HARRINGTON: Linda?

MS. GOLDSTEIN: I just want to make, again, a

few comments.

To Susan's comment about sort of the burden being placed on the industry to respond and the consumer, you know, perception that needs to be corrected about this industry, I just think we have to take that into the context that one of the things we've identified here is that we don't really know what the magnitude of the problem is and what the source of the problem is. I mean, to me, that's one of the things that's come out of this session.

I know Michael had commented earlier that in their segment of the business, sales via telemarketing have increased by 30 percent. So, to me, that doesn't reflect a lack of consumer acceptance or consumer confidence in telemarketing as a marketing vehicle.

I -- in answer to the apparent inconsistency between not wanting to call people who don't want our product versus not wanting to tell them, I don't think those are really two inconsistent viewpoints. The industry is not opposed to letting consumers know about their rights to be placed on a do-not-call list. I think the question is what is the most appropriate vehicle for doing that, and from an industry perspective, I look at a statement like that almost like a mandated warning statement, and I guess my feeling is

if you're in the midst of a conversation with a customer that's a, you know, a very loyal customer or a very -- you know, a new customer and very happy about the offer that you're presenting and very excited about it, the reality is that it's counter-intuitive to that message after you've basically spent the first three minutes of the call interesting them in the offer and it's a valued offer and they're happy about it to then say, And by the way, we want you to know that you could be placed on our do-not-call list.

It's almost a suggestion that there's something wrong about what we're doing. It's a negative message, and I think it's just a question of time and place. So, you know, to me, the issue is, again, finding out what more appropriate and less burdensome places for the industry that message can be delivered, not to mention the additional cost of having to include that on every call --

MS. HARRINGTON: So, Linda, what's less burdensome and more appropriate?

MS. GOLDSTEIN: Well, one of the things -- and I will -- to try to be constructive, you opened the question by asking whether other things self-regulatory this industry can do, and in the three minutes we had to chat here, you know, one possibility might be additional

self-regulatory guidelines addressed to the do-not-call aspect of the rule.

MS. HARRINGTON: What would they say?

MS. GOLDSTEIN: Well, they might -- first of all, they might detail certain procedures about, you know, how companies go about maintaining it, how the data is -- how the data is collected, how it's transferred, with what frequency, and there might also be guidelines in terms of better interpreting consumer reaction and when, you know, a consumer's dissatisfaction should be treated as, you know, leave them alone. I mean, you're giving --

MS. HARRINGTON: What about setting some performance standards for the speed with which a request should be implemented?

MS. GOLDSTEIN: That's one of --

MS. HARRINGTON: I just had a call the other night, and when I said, Would you please put me on your do-not-call list, their response was, Yes, of course, we're glad to do that, but we should tell you that it takes six to eight weeks, and that just seemed awfully long, and I said, Wow, that seems like a really long time, and the poor telemarketer was like a deer caught in the headlights, you know, it was like --

MS. GOLDSTEIN: You know, I mean, we truly are

brainstorming here --

MS. HARRINGTON: Yeah, well, that's what we're doing.

MS. GOLDSTEIN: -- but I would intuitively think that that's an element of something that could be put into guidelines, but I think that the concept we're trying to throw out here is that -- I mean, there is a very powerful self-regulatory mechanism in place, and given that maybe we should look at how we can use that same vehicle and address other issues.

What's not in place is some uniformity in interpretation, in how to better ensure that the intent of the do-not-call provision is properly carried through by companies, and maybe that's an area where the industry could provide some guidance on a self-regulatory basis.

MS. HARRINGTON: Hold on that for a minute.

I'd like to know, Neal, what your response is to that idea, that is, to increased emphasis in the industry coupled with much more specific direction about how to comply.

MR. FISHMAN: Neal Fishman, Connecticut.

I liked what I heard earlier this morning from the securities dealers association in their guidelines, and I'd like to see what they've done that's been

effective as represented best in that industry, but I think there is a role for self-regulation here. Nevertheless, there is also a role for the states. It's not the state staffers who are clamoring for this legislation; it's the constituents, especially senior citizens and their caregivers that we really hear from. I don't think that self-regulation, which would probably be complied with by the honest businesses that are -- that we don't have problems with now, is addressing the problem.

MS. HARRINGTON: Do the states ever think about safe harbors for those honest businesses, so that if they were in compliance with an industry's code, that would satisfy the state? Is there any --

MR. FISHMAN: We do think about safe harbors, but not in a fond regard.

MS. HARRINGTON: Not in a fond regard? In your legislatures, the people who enact these laws?

MR. FISHMAN: They are subject to the political process in terms of exemption for industries.

MS. HARRINGTON: Okay. Jason?

MR. CATLETT: Thanks.

I'd like to make not much of a brainstorm comment but sort of an obvious comment, it should be obvious to an idiot, which is that direct marketers and

telemarketers are economic rationalists, and they're no more going to restrict their own access to their prospects than, for example, the tobacco industry is going to restrict its access to smokers. So, really, they're only going to go as far as they are forced to go, and so I think it's --

MS. HARRINGTON: Those are fighting words, Jason.

MR. CATLETT: Well, would someone disagree?

MR. DUNCAN: I would.

UNIDENTIFIED SPEAKER: Should we just put up our cards if we disagree?

MR. CATLETT: So, throw me a bone here. Go further than you have to.

MS. HARRINGTON: Mallory, you had your card up.

MR. DUNCAN: Well, I am not sure for which point to direct it at this point, but I guess I will start with Jason just briefly.

Yes, companies do have different -- place different values on their consumers, and some companies are very responsive to consumers, some are less. The outer boundaries of that are determined at the start to some extent by regulation, and that is as a result a level below which all companies would not go, but other companies do, in fact, try to develop internal systems

for determining how often -- I guess I -- I guess it's okay to mention their name here, J. C. Penney, for example, has an internal privacy program that's participated in by large numbers of divisions within the company to ensure that customers are not contacted by any division separately more often than X number of times in the course of a 12-month period, because they don't want the customers to get turned off on the name of the company by getting too many calls, and I hope it's not out of bounds by mentioning that here, but yes, companies make those decisions all the time. So, it's -- yes --

MR. CATLETT: Sure.

MR. DUNCAN: -- there is economic rationalization going on here, but it is what does your customer think about us and how many calls can we make to that customer or how many times can we try to contact that customer before it becomes detrimental, and so they cut back on the calls at that point.

MR. CATLETT: Okay. So, if your point is that individual marketers make decisions about restricting frequency for various reasons, sure, that's true, but as an industry I don't think that those standards are uniformly imposed on themselves, on the industry by themselves, and I think there has to be an external

imposition of a baseline standard.

MR. DUNCAN: I think that's what I said. I said there is an external standard that sets the lower bound by which all companies have to comply, and that happens to be the rule that we're talking about here today, with its obvious exceptions, but for other companies, they each develop their own privacy sensitivity vis-a-vis their company -- their customers and establish a level in accordance with that.

MS. HARRINGTON: Okay, Jeff?

MR. KRAMER: I wanted to get back in support of Susan's comment about putting something in the script about providing consumers with the opportunity to get on a do-not-call list, and Linda was saying it gives the perception of doing something bad, and I think for AARP's members it's not a perception of doing something bad. A lot of our members feel it's an invasion of privacy. The phone is in their house. They want -- they pay for the phone service. They would like to use the phone the way they want to use it.

Already they feel like they're -- a lot of them are making -- are helping the LECs out a lot because they are purchasing Caller ID and call blocking, other services they would not have purchased if it were not for their fear of getting all these calls, and fear is a

part of it. There's a lot of these -- especially with the automatic dialing, where they get on the phone and there's no one there, and they don't know what it is, and they're concerned that maybe someone is lying in wait for them to find out if they're home or not.

So, there are really a lot of problems with this, and I think it would help, for our members certainly, if there were a message there giving people an opportunity to get off the call list. If people feel strongly that they want to continue to get these calls, they can make their decision. It's their decision that way.

MS. HARRINGTON: Jeff, does AARP do outbound telemarketing? Do you know?

MR. KRAMER: Yeah, okay.

MS. HARRINGTON: Does anybody -- I'm just --

UNIDENTIFIED SPEAKER: I don't think so.

MS. HARRINGTON: I'd be interested to know if it does whether you're doing -- whether its policies include those kinds of statements in the scripts and so forth.

MR. KRAMER: Okay, I can check on that and submit it to you.

MS. HARRINGTON: Yeah, it would be useful to know that.

MR. KRAMER: Okay.

MS. HARRINGTON: David?

MR. MORTMAN: Yes. It seems to me that we ought to identify exactly what we're talking about, and what we're talking about is taking consumer sovereignty and moving it to the ability for the consumer to say I don't want to be called, and therefore what -- in saying that, what you have to then say is that the telemarketer ought not to interpret what a consumer is saying to them, which would give them, the telemarketer, the ability not to put them on a do-not-call list, so that a consumer going through a full script, they -- it can be interpreted to where do-not-call may not be what the consumer's really asking.

It seems to me that if a provision of a sale of a product or a service is identified up front, the consumer has a right to listen to Linda's pitch or the consumer has the right to say to them, I'm sorry, I'm not interested in that service or product. Call centers today, we're dealing with technology that integrates computer and telephone. The screen is up. It seems to me that if you have an automatic key on the phone that would blip up a command on the screen, that a consumer can press and say you don't have to interpret what I'm saying, here's the key, and it says I do not want to be

called. And technology exists, as I've identified before, to where in real time that do-not-call request can be responded to promptly, and I think the technology exists. There's no reason not to identify that that's --

MS. HARRINGTON: Well, if it exists --

MR. MORTMAN: -- that that's a capability.

MS. HARRINGTON: -- do you who do telemarketing know that or accept that proposition, that the technology exists?

MR. MORTMAN: Well, as long as you have integration of computer and telephone, you have the ability to create that command. So, the answer is it exists. It may not be there right now, but you'd be able to put it in. It is not a difficult event.

MS. HARRINGTON: Okay, Allen, you had a question.

MR. HILE: I -- it's sort of a variation on what you threw out to start this part of the discussion, and that is this:

If calls that are made despite do-not-call requests are coming from noncovered entities, is there anything that covered entities can do to encourage that to stop so as to take some of the energy out of the push at the state level for state do-not-call lists?

MR. SHERMAN: Well, to the extent that they are DMA members and must adhere to TPS, that's a step in that direction. I recognize it is not all-comprehensive, because some consumers haven't signed up with TPS, but certainly we don't exempt the noncovered entities from TPS.

If I could --

MS. HARRINGTON: I'm sorry, go ahead, Bob.

MR. SHERMAN: Well, DMA is interested and willing to participate in any self-regulatory activity that would further the benefit to both consumers and the industry. My concern, from what I've heard so far, is that, you know, at what -- I don't want to sound too apple pie here, but what makes -- what separates us from other countries is the -- is that we live in an information society. The free flow of information is just enormously important, not only historically to the growth of this country but where we are now, and what I'm hearing now is consumers who are part of the switch telephone network, who are part of this information society, I'm hearing that we ought to convert telephone to a one-way communication channel when it comes to commerce. You can't call us; we'll call you.

We ought to put the burden on industry to notify during a commercial phone call of a consumer's right

under the telephone -- Telemarketing Sales Rule, when the rule does just the reverse. I'm hearing that even though someone is a long-term, repeat, happy customer that has never given any indication whatsoever that they don't want to hear from a company, the company still ought to give them this notice.

And I don't know why -- how we got down this path of reversing everything that has -- that historically has gone on, including in the legislative history of this rule. I'm all for advancing this thing and for working out ways that will be mutually beneficial, but it seems that we're just taking the whole load, at enormous expense, and saying, Look, you're the ones who benefit, because you make the buck when somebody buys something, so you bear the whole burden here, and that has not been the history of this rule.

MS. HARRINGTON: Well, I think what we have had here around the table is certainly some discussion, and others have certainly expressed that view, and others have expressed the opposite view, and that's what a discussion of this issue --

MR. SHERMAN: Yes, I'm not of the opposite view that everything has to be one-sided one way or the other --

MS. HARRINGTON: Right.

MR. SHERMAN: -- But the only suggestions so far completely put any aspect of any burden strictly on business and at its out-of-pocket expense as well as out of its commercial benefit.

MS. HARRINGTON: I'm not sure that I would agree with that characterization. I think there have been some other suggestions that give consumers some additional opportunities to express their wishes more easily, and --

MR. SHERMAN: We're all for that.

MS. HARRINGTON: -- and let me -- you know, I remember at one of the discussions of this issue when we promulgated the rule, I asked, Well, why can't we have two different kinds of rings, you know, one ring for commercial calls and one ring -- and a different kind of ring for noncommercial calls? Now, here at the FTC, on our phone system, we have two kinds of rings. There's one ring for calls that come from inside our system and a different ring on calls that come from outside. And at the time, I can't remember what the answer was to my question about why can't we have different kinds of rings. So, what about that idea? Is there --

MR. SHERMAN: I'll defer to somebody who knows more about it other than we'll be here a year from now

with people complaining about I don't like the sound of that ring.

MR. MORTMAN: They have a choice of rings.

MR. SHERMAN: They got me out of the shower, and --

MS. HARRINGTON: Bob, I think we really wouldn't hold a workshop on that. We're willing to hold workshops on lots of things, but that wouldn't be a topic, but what about fast ring, slow ring, two rings, one ring, double ring, you know, ring-a-ding-ding versus ring. You need to come up here if you have an answer to that or we'll pass this microphone to you if it works. Oh, it doesn't work.

Okay, identify yourself.

MS. HARMS: I'm Shelley Harms from Bell Atlantic, and I just wanted to touch on a service that we're about to introduce, it's already been introduced in some of the other regions, but it's called Call Intercept, and what it does is if there is somebody who is calling you and they have no number identified for Caller ID, it will go to an announcement saying we do not -- you know, this call -- this person does not accept calls from numbers that are not identified, please record your name after the tone.

If the caller then does not record their name,

the call -- the announcement says we do not accept calls from unidentified parties, good-bye. If they do record their name, then a special ring rings in your home, you know then that it's from Call Intercept. The special ring tells you, you know, that it's from Call Intercept, you also get Caller ID saying this is from Call Intercept. You then have the option whether to pick up the phone or not. If you pick up the phone, you listen to the name, then you have several options. Again, you can send it to voicemail, you can take the call, or you can push a number that says give them the do-not-call request.

MS. HARRINGTON: So, how much is the --

MS. HARMS: And then the machine will say to you -- to say to that caller --

MS. HARRINGTON: How much?

MS. HARMS: It's going to be at \$5 a month.

MR. SHERMAN: \$35 per call.

MS. HARMS: It is going to be introduced in the D.C. area first starting in March, and then it will be rolled out throughout the region.

MS. HARRINGTON: Okay. So, that would be \$60 a year for that service versus \$10 a year to get on the state do-not-call list versus DMA for free. So, these are increased options and, you know, and an opportunity

for people to, you know, pay for the degree of privacy, perhaps, that they want.

MR. MORTMAN: Other carriers provide Privacy Manager, Privacy Director, I think --

MS. HARMS: That's the correlation.

MS. HARRINGTON: Yeah, this is part of the Privacy Manager product, yeah.

MS. HARMS: And just in case it didn't get in the record, one of the options is to tell the machine to tell the caller to go away, and it will say to please put me on your do-not -- please put this person on your do-not-call list.

MS. HARRINGTON: Well, that -- I mean, I would just observe that in terms of the conversation that we've heard today, but for the fact that this will cost money, which may be an issue for some of the people sitting around the table, not necessarily for us, it at least would address a lot of the concerns.

Jason?

MR. CATLETT: But Shelley, to clarify, if the number comes in with the calling party number identified, the call rings straight through, correct?

MS. HARMS: That's correct.

MR. CATLETT: So, the average telemarketer would be unimpeded by this scheme.

MS. HARRINGTON: Well, actually, what we were hearing earlier is that most service bureaus and others use T-1 lines that don't generate ANI.

MR. CATLETT: Well, many -- it's CPM, ANI is an 800 number thing, but many telemarketers will not be impeded by the scheme.

MS. HARRINGTON: But then Caller ID is an option.

MR. CATLETT: Yes, you get a number, and many people don't have Caller ID. I don't think that will solve the problem of unwanted calls at dinner time. It may abate it somewhat, but it won't solve them.

MS. HARRINGTON: Okay, Susan?

MS. GRANT: I just wanted to clarify, when I first brought up the possibility of telling people that they have the right to be put on do-not-call lists this morning, I said when it's clear that they're not buying, and I still think that that's the situation that is most compelling for that to happen. If somebody is a regular customer or if they're buying something, I'm less concerned about the necessity to give them this message, but if it's clear that the person isn't buying, but it -- but they're not precisely saying those magic words, that's where I think the problem lies.

MS. HARRINGTON: Okay.

Gordon?

MR. MCKENNA: I had a few issues I'd like to -- since this is an open forum and free discussion.

E-commerce in regards to the call center world. Forrester Research out of Boston, Massachusetts does research on the internet. The number one reason for not completing a transaction in E-commerce is that they can't talk to someone. Does that tell you anything about communications and people wanting to talk to people when they buy and -- buy things?

I'd like to propose that we have five very intelligent people here from the FTC, what can the FTC do? You've been living with this issue for years. You've gotten enough feedback from consumers. What can you do? Maybe we can live with what you can do. And I'd like to see the FTC get their hands around what the problem is.

You know, it's kind of -- I hate to do this analogy, but it's very similar to -- I mean, I don't have a gun, I don't want to take the right away from somebody to have a gun, but what happens is we pass legislation for law-abiding people to live by, and the people we're going after don't abide by the laws anyway.

Well, we're doing the same thing with the

teleservice industry. We've got this core industry that you keep putting these rules and regulations on. We live by those things. I mean, we have an eight-step evaluation process. Some companies might have ten. But the number one issue is are we complying with the regulatory laws that we have to when evaluating whether or not our TSR is doing to good job?

I mean, that's first with us. You get into some of these splinter operations that are either too small to be able to afford the regulatory muscle or they don't oblige by it anyway, these are the people that cause all of our consternation.

Now, on a humorous note, I wonder who Bell Atlantic's going to hire to sell their new product?

MS. HARRINGTON: Thank you, Gordon.
Michael?

MR. PASHBY: Yes, just to get back to the discussion we were having before about the -- informing people of their rights under the do-not-call, I don't think Susan said it's a question of whether someone doesn't want to buy. I think what industry should now be doing is looking at a way to self-regulate here to -- that certain trigger language from the consumer should trigger -- should trigger discussion with the consumer of the -- of the do-not-call option.

It's not I don't want to buy, and it's not absolutely the consumer saying put me on your, you know, call list. It's some other language, other language that the consumer is saying that's going to trigger this option, and I think that probably, ultimately, will work.

MS. HARRINGTON: You know, we're just at the beginning of this review process, and this record is going to be open for quite a while, and so if there are additional sort of leadership measures that you think could be taken, I would urge you to put those in the record.

OPEN MICROPHONE

MS. HARRINGTON: We are at that time of day when some people who have been waiting patiently all day long and listening to all of us will have an opportunity to speak, and I'd like to tell you who they will be and the order in which they will speak. We are going to hear from Michael Worsham, is Michael still here?

MR. WORSHAM: Yep.

MS. HARRINGTON: Okay, good, then Diana Mey, is Diana here? Great. Then we are going to hear from Heather McDowell, then Chip Eagle, and finally Steve Brubaker.

MS. HARMS: Am I on that list?

MS. HARRINGTON: No, but I will put you on it, Shelley. Spell your last name for me.

MS. HARMS: Harms, H A R M S.

MS. HARRINGTON: Okay, and I believe that those are all of the public participants who have asked to speak. Will you introduce yourself and spell your name for us, each of you, and then tell us who you are representing.

MR. WORSHAM: Okay, what -- is there a time limit?

MS. HARRINGTON: We would like it to be reasonable.

MR. WORSHAM: Okay.

MS. HARRINGTON: Maximum five minutes I'm told.

MR. WORSHAM: My name is Michael Worsham. I live in Forest Hill, Maryland, and I have a -- both a day job and I'm also an attorney, and I have litigated a couple of cases under the FCC law.

First off, I'd like to say that I reject the use of the term "consumer," because I'm first and foremost a citizen and a human being, and I don't define myself over buying stuff, and I don't think most of the people who are interrupted washing dishes and doing whatever else they're doing are in a consumer mood, they are just being people, and you have got to relax the use of that

term.

There's been talk here about consumer awareness or I'll call it citizen awareness as being a big problem. Maybe it is, but that's -- solving that is not going to change anything, because people would still have to be -- to tell each and every one of these company-specific lists not to be called, and even then, the telemarketer is most likely going to not identify themselves or -- one or the other, not provide a policy or whatever else. That's a nice thing to throw out as a nice apple pie thing, consumer awareness, you know, we don't have to -- you know, that's just not going to do it.

Telemarketing is not a legitimate activity. Anybody who knows anything about telemarketing knows that the majority of the people do not want to be called. There's a greater than 50 percent chance when you make a commercial solicitation call, that person does not want to get that call. That means you're engaging in an activity that you know right off the bat is an invasion of a person's privacy under common law. Someone asked about that recently, and I think yeah, but because it's so hard to determine what that value is worth, the FCC and Congress essentially put a \$500 figure on that to encourage enforcement of that privacy

right.

I've heard talk about this nonsubject violators or noncovered entities. That's just absolute nonsense. Just a few -- two weeks ago on the FCC side, AT&T was cited for violations. AT&T is also in a small claims case, which don't get reported, in a jury trial, which found two former telemarketers themselves to have -- was found in their decision to violate the TCPA, which is basically the same thing, the do-not-call provisions.

I'm in a case against Nationwide Insurance. Their excuse is our independent agents don't have to transmit my do-not-call requests, the same independent agents that use -- that invoke the name Nationwide and use the same three-question script on me.

Baltimore Sun, after a several thousand dollars settlement with them, they couldn't even put in the settlement agreement that we agree at no time to call you again, and I've got a friend who got a call -- after getting a letter from their own Baltimore Sun telemarketing agency that we won't call you again, he got called anyway. So, this is a pervasive problem. It's not just noncovered entities or such nonsense as that.

And I'm sorry, I have to pick on one person here, DMA made the statement that every Golf Digest

subscriber absolutely definitely wants to be called when they get a renewal. What kind of nonsense is that? That means that everyone who is subscribing to any particular magazine wants to get a do-not -- a renewal notice? It means that that subscription list stays that way in perpetuity? That's just ridiculous.

And if I understand what an abandoned call is, that's calling and not completing the call and essentially hanging up on a person. That's illegal both under the FCC TSR and the FCC's Telephone Consumer Protection Act, because it doesn't provide identification, in which case the DMA, by -- they said here today, advises to set an abandon rate close to zero but not zero is essentially telling its members to violate the law under both FCC and FTC.

What you need to do is get to a national do-not-call list. That's the best thing I can see that the FTC can do, and it would work perfectly well with the existing -- you could -- someone was I believe trying to -- yes, you can have -- work side by side without any overlap or conflict and have a national do-not-call list, which the FTC could implement after a rulemaking, and then have the company specific that -- under the FCC's law. That would give total choice to everyone.

The industry is scared of a national do-not-call list. I don't know why if they really don't want to call people who don't want to get calls, but they are afraid of it. And as far as 50 state lists, well, the telemarketing industry didn't want a national do-not-call list, so they got this company-specific thing. Well, they're a victim of their own success, and now the states are implementing the laws, and look, if you want to operate a business in 50 states, that's the price of doing business, and if you're not going to comply with 50 lists, well, that's it, you know, that's part of your business if you have to comply with 50 lists.

Caller ID would be nice if you could have that transmitted. We heard on the one hand it's going to cost millions from someone at MCI. Russ Smith, who left, said it's going to cost a couple hundred dollars. That's a big, big gap there. So, I'll leave it to you to work that out. That would help I think a lot, but it's not a panacea, because you shouldn't have to be required to pay for Caller ID, and this other one that was just mentioned about Call Intercept.

I hope the next time I come back here that you're having a rulemaking on a national do-not-call list. Thanks.

MS. HARRINGTON: Thank you.

Diana Mey?

We have this red/green/yellow light thing to time for five minutes, but I don't think we're going to use it. I know we can rely on you all, and we will keep an eye on the clock.

MS. MEY: Hi, my name is Diana Mey, my last name is spelled M E Y. I'm a housewife. I have three children, and I'm from Wheeling, West Virginia.

I came today because I'm really interested in the do-not-call provision. As you can probably imagine, with three sons, my boys are in three different schools, we lead quite a busy life, and probably I'm old-fashioned in that one of the places that we can all sit down and talk about our day was the dinner table, and I found that in ever-increasing numbers I was receiving telemarketing calls during the dinner hour, also throughout the day, but particularly at the dinner hour.

I really wasn't aware too much of my rights under the federal law, but I vaguely heard something about a do-not-call provision, and I was a novice to the internet back at the end of '97, but I did know enough to get on the internet and do a search, and I came across at first the Telephone Consumer Protection Act

that's administered by the FCC and then later the Telemarketing Sales Rule from the FTC. So, I was pretty uneducated at that point. Since that time, I'd say I'm probably a fairly educated consumer.

So, I began keeping a list of telemarketers that I asked not to call me back, and since that time, I had one telemarketer in particular that was an affiliate contractor for Sears call me repeatedly over a six-month time period, even though I told them I didn't want to hear from them, to put me -- I used the specific words, "Please put my phone number on your do-not-call list," and they still called me back.

I wrote letters to the company. We exchanged several letters. The company told me that they did not have to comply with this federal law because they were merely soliciting appointments. They wanted to put a salesman in my home to pitch siding to me, so they did have to comply with the federal law, but they assured me that they would not call me again.

Being as -- not very educated as I was, I thought maybe they were right. So, I filed the letter away thinking, oh, at this point I'm not going to hear from them. Unfortunately, I did hear from them again after that, and I called my state's attorney general, and I found they did have to comply with the law. To

try to make a long story short, I finally wrote another letter to the company and said that I would -- I was going to take them to small claims court if they did not resolve the matter.

I eventually had to file a small claims suit, and I was scared to death the whole time I filed the paperwork, but they ended up filing a countersuit against me for \$10,000, plus punitive damages. They asked the court to punish me. They not only filed it in a court where it exceeded the amount you could file, which was in small claims, but they tried to scare me to death, and I want you to know that this is the kinds of things that the average consumer is being faced with, this kind of harassment.

Eventually I -- my husband came home and was quite upset, as you can imagine, and fortunately in our Cub Scout Den that we led, there was a boy whose father was an attorney and was just outraged that I would be treated this way. He took the suit and negotiated an out-of-court settlement for me and kind of a happy ending to the story, Sears -- they initially said they would apologize for the countersuit and backed out of that. My attorney filed a \$45,000 lawsuit for malicious prosecution, and I came to Washington, D.C. last year and was the recipient of a privacy award, which the

ceremony was covered by USA Today, and so I got some publicity over that, and it hit the newspaper, and within a few hours after that, officials from Sears called my attorney and said that they wanted to settle the case and would do whatever they could to make me happy again. So, they actually flew some executives from their office in Illinois to my home town and personally apologized to me and my husband and my children.

It was quite -- it -- I know it sounds corny, but it was the principle of the thing with me. The most important part of the settlement was the fact that they sat down across from me and told me what they were doing to change their telemarketing practices, but I want to say to you that since then, I've continued to -- I know the right words to say, and yet I still continue to get calls. I've got a case pending in small claims court, I'm representing myself, against MCI Worldcom right now. They continued to call me. The first time they called, I asked them to mail me their do-not-call policy, because I understood that to send a message that I was serious, that I didn't want to be recalled, and still they called me.

So, I'm working with my state senator right now to introduce legislation for a statewide do-not-call

database, because I don't believe that there is any other way that I can prevent these calls from coming into my home. I don't want to receive any telemarketing calls, and I just don't know any other way to prevent it. I just don't see any other way.

So, that's basically what I wanted to say. I mean, I don't know what the FTC can do, but until, you know, I -- I recently -- I did want to tell you that I recently had a telemarketer who telemarketed for multiple clients, and over a year's time, they called me four times for four separate clients, and I was savvy enough to know to say, Look, don't call me for that client. Now, do you make calls for other clients? Yes, we do, Mrs. Mey. Please put my number on your corporate do-not-call list, because I don't want to be called for any of your clients. And still they called me.

The last call was November 4th. I finally reached someone at their corporate office after leaving several messages and not getting calls back, and I was told in a letter from their attorney that we -- Mrs. Mey, we find it hard to believe that -- we checked our lists, and yes, we have all four of your requests not to be called for all four of these different clients, but we find it hard to believe that we would have called you for -- that we would have processed part of your request

and not your other part of your request to be on our corporate list.

So, living in the state I do where I can tape my calls, I responded by asking them if they would like to hear a tape recording of the latest solicitation in which I spoke to not only the telemarketer but two separate supervisors who assured me that I would be placed on the corporate list when I specifically knew to ask, I don't want to be called for any of your clients, and at that point, that supervisor, who was -- her title was quality assurance, had told me even after the fourth call, when I'm calling in to their corporate office, that I had not been placed on the corporate list, and I never received a do-not-call policy that I asked for four times.

So, when I played the tape, they admitted that they had probably had an isolated incident. I said, No, I have tapes of all the calls. So, it's not isolated incidents. These companies are not -- I think they think consumers will go away, because not many consumers are comfortable with filing lawsuits. I'm not, but it's the principle of the thing with me, and I will pursue it, because I believe that a consumer has a right to be left alone in the privacy of their own home.

Thank you.

MS. HARRINGTON: Thank you very much, and thanks for coming all the way from Wheeling.

Heather? This is, you know, an easy act to follow.

MS. MCDOWELL: My name is Heather McDowell, and -- M C D O W E L L, and I'm here representing the Electronic Retailing Association, which the membership includes a wide variety of companies that market products and services directly to consumers through different electronic media, including the internet, direct-response television and both inbound and outbound telemarketing. I wanted to just touch on two points briefly.

One relates to a question that raised the possibility or the idea that a trade association might act as a conduit for a state do-not-call list. In addition to a couple of the issues that Bob Sherman had raised about -- that sort of stand as a potential obstacle to that, namely the liability issues and access, another -- another question that's sort of out there and I throw out as food for thought is to what extent a state would even recognize that it's compliance with their law. Some of them are crafted in a manner which would seem to suggest that the telemarketer needs to subscribe directly to the list in order to be in

compliance. So, getting it through a third party might not really carry the day.

And then the other thing I just wanted to let people know, if you haven't already seen them, ERA has about eight-nine months ago put together a task force to look at telemarketing issues in this industry and has put together a set of draft guidelines, which we're pleased to share with everybody. We've circulated them -- they are draft, it's a first draft. They're out now for member comment and consideration, and we welcome anybody who wants to share thoughts or comments on the draft and how they might be able to address some of the do-not-call issues here today, to contact the association, and there's copies out in the hall, pick them up and let us know what you think.

Thanks.

MS. HARRINGTON: Thank you, Heather, and thank you again for the coffee and cookies.

MS. MCDOWELL: You're welcome.

MS. HARRINGTON: Chip Eagle?

MR. EAGLE: Do you mind if I sit down?

My name is Chip Eagle, E A G L E, and I'm with the Magazine Sellers Association, and I'm the president of Budget Marketing, which is a magazine selling company, and I had made notes throughout the day, so I

-- if this kind of seems scrambled here, but you asked what had changed in the last five years. Most of the technology on our side was here five years ago. There's been some adaptations of things, but the real changes have been more on the consumer side with the advance of the Caller ID, the answering machines are certainly, you know, becoming more predominant, and call blocking, do-not-call lists. So, most of the changes in the environment in the last five years have come on that side of it.

Right now we're seeing approximately 35 to 40 percent are blocked or are answering machine or screened or, you know, all of those things. So -- and that's up in the last five years probably about five-six points, so -- and I would assume that's from that technology.

Cost issues. This morning I called my office and asked them to put together what the real costs are, not opportunity costs or anything like that. In our office, to run our do-not-call programs, which we provide to our independent sellers, cost us approximately \$6,000 a month. That's \$5,000 in specific wages of people who work in these areas and \$1,000 a month in other fees, buying the list from the states, which is an expense --

MS. HARRINGTON: Okay, that's \$6,000 a month

against how many calls would you reckon you and your independents are making every month?

MR. EAGLE: Gosh, I couldn't tell you right offhand, but I can certainly get that information.

MS. HARRINGTON: I'm not sure, is that a useful comparison or would there be a different comparison that would be more --

MR. EAGLE: Let's see if this will work.

MS. HARRINGTON: -- informative?

MR. EAGLE: I also asked how many do we have on our list, and we've been doing this since TCPA or even a little bit before that was enacted, and we're just about at 2 million right now on our do-not-call list. Now, that doesn't include the tips and the other programs that -- and state do-not-call lists, but our own generated list is about 2 million, and that's in -- I mean, how long has it been since TCPA, eight years, nine years? So --

MR. ANDERSON: This is 2 million people that you've picked up who don't want to be called?

MR. EAGLE: Yes.

MS. HARRINGTON: \$6,000 a month to run that.

MR. EAGLE: So, does that add up to something you could use?

MS. HARRINGTON: Yeah.

MR. EAGLE: And I'll provide more comments, and as far as a hang-up on someone, someone in our business is fired if they hang up or are rude to a customer, it's as simple as that. I have fired them myself. It's not something we stand for. We try to put forth professional standards and work with people. Someone who would be hang angry with a customer or would hang up on them because they asked to be put on a do-not-call list or something is just going to be terminated. There is not any question about it, and we have done it plenty of times.

One issue that I think is important and may skew my costs to the high side, not all telemarketing is used through predictive dialing and massive technology. We have -- about 60 percent of our production comes from nonpredictive dialing technology sources. Companies that may have 10-15-20 phones may not even qualify for T-1 lines. So, one of the things I think we have to worry about is creating what look like solutions that actually become barriers to entry into this business, as well. So, I don't know if that makes any sense. I don't think we want to put up a technology barrier that people have to have.

Now, the procedure of how those work and why it would cost a little more in our office, someone is

talking to a customer, has the list in front of them that's been printed out, hard copy. They -- a customer says they want to be on the do-not-call list, and we do not require magic words, it's -- the employees are trained very simply, if they feel the customer would like to not be called again, they're to put them on the list, and everybody who goes to work in our company, even if they're administrative secretaries, will still read and sign the do-not-call policy, and I think you'll find everyone in our business is pretty familiar with that process.

Then they would fill out a small sheet, a do-not-call report, and send that to our home office in the next day's mail or the next time they send things to our office. We then have a data entry operator who enters that information, and it goes onto our do-not-call list. Whenever one of our affiliates purchases a list in order to do a telemarketing campaign, it is washed against that, what they bought will be less, the TPS, the state do-not-call list and our own suppression file, and that's what they get. I don't have numbers on what that nets out, but I do know it varies very much by whatever list was purchased. So, --

MR. HILE: Chip, for the record, could you tell

us what TPS is?

MR. EAGLE: I'm sorry, I'm referring to the DMA Telephone Preference Service. I'm sorry, should I not call it tips? Is that --

MR. HILE: That's okay.

MR. EAGLE: That's what people called it once. I don't know what it is now.

One thing I wanted to ask you, looking at the situation, you asked for brainstorming of what we can do to address the situation. If I were going to look at this in a business sense, the most -- being a telemarketer, the most effective campaign is a combination of advertising and telephone calling to people with the message when they're in a buying position.

Looking at this situation in that form, you have a unique situation where you have the telemarketing part taken care of. Our industry is contacting those people on a regular basis. What would be missing then in the combination would be the advertising or awareness, so that when they are in that position they know what they should do. I know the FTC right after the TSR put together a program with industry, included radio commercials, ad campaigns, and I'm not sure what happened with that program, but --

MS. HARRINGTON: It ran.

MR. EAGLE: It ran?

MS. HARRINGTON: Yeah, but we didn't focus on this issue. We were focused on --

MR. DUNCAN: Sweepstakes.

MS. HARRINGTON: -- sweepstakes primarily.

MR. EAGLE: And I think one of the things our company did in that process was submit something to you that maybe we would include in all of our mailings to customers, and that put you in a different position of saying, you know, do you want your name on this and can you approve something that's going out, and I understand that, but maybe there are some steps of some things that could happen by increasing the awareness campaign so that the telemarketing campaign is more effective in your program.

MS. HARRINGTON: Okay.

MR. EAGLE: And that's all I have.

MS. HARRINGTON: Thank you, Chip.

MR. EAGLE: Thank you.

MS. HARRINGTON: Diana Mey, I have one question that occurred to me for you, especially listening to Chip, talking about what his company does. You said that you're keeping a log of companies that call you and keeping track of when you tell them that you don't want

to be called. Are you finding that some companies are complying with the law? Does your log tell you that?

MS. MEY: If I remember correctly, it seems that the -- that it's more the case that more companies are not complying with my requests, but I'd have to look at my list. I mean, it's not something that I go and look at every day.

MS. HARRINGTON: Sure.

MS. MEY: In fact, when I got the fourth call from this telemarketing outfit that calls for multiple clients on November 4th, you know, something in my mind recognized that name, and I went back to the list and I went, boom, this is the fourth call from them.

MS. HARRINGTON: Well, if you wouldn't mind looking when you get back home at your list and just dropping us a line and we'll put your letter in the record, but we'd be interested to know --

MS. MEY: Sure.

MS. HARRINGTON: -- whether you have had the experience of asking not to be called and then not receiving any more calls.

MS. MEY: I ask for do-not-call policies routinely now, and I rarely get do-not-call policies. You know, I -- what I hear a lot is, Okay, we'll send you a confirmation letter that you've been removed, and

I say, No, excuse me, I think that maybe you don't understand what I'm asking for. You can send me the confirmation letter, but what I really want is a copy of your company's written do-not-call policy, and it's just argued back and forth that they really don't know, you know, what I'm talking about, and that just baffles me, because here I am, the average consumer, and 99 percent of the telemarketers that I talk to don't know what I'm talking about, so...

MS. HARRINGTON: Thank you.

MR. MCKENNA: Can I ask her some questions?

MS. HARRINGTON: I don't think so.

MR. MCKENNA: Okay.

MS. HARRINGTON: Steve Brubaker?

MR. BRUBAKER: Hi, my name is Steve Brubaker, B R U B A K E R, and I represent Infocision Management Corporation. First of all, thank you for the opportunity to be here today. I appreciate the approach that all sides can share their input on this issue.

I also was in Chicago and sat through the hearings in '95, and I really feel that the rule that was eventually adopted did give us a reasonable approach by giving company-specific do-not-call lists. Our company was founded in '82, and we're a teleservices agency. We make calls on behalf of other companies. We

also have inbound and outbound call centers. We have 12 centers in Ohio and West Virginia, and we employ over 1500 people. We're members of the ATA, the DMA. We do a lot of work for national nonprofit organizations. We also work for Fortune 1000 companies.

One of the things regarding DNC requests is from the day we opened our doors, we have always honored do-not-call requests. We think it's the appropriate way to do business, and we have -- we have done that long before it was required. I ran some numbers. Approximately 3.2 percent of our outbound calls, we're asked to put the customer on the do-not-call list. So, we also have a very large file, getting close to 2 million names, of people that have asked us not to call for particular clients.

But one of the things that I do as overseeing our operations is I personally send those letters out when people ask for a copy of our do-not-call policy, and in that letter we provide written confirmation. We also, though, provide a copy of our do-not-call policy and some additional educational materials. I include the American Teleservices Association's consumer guidelines brochure, which is a great listing for a consumer that tells them how they can protect themselves against fraud. It has the 800 number for the National

Fraud Information Center and other helpful hints for consumers when they're receiving and making phone calls. So, we provide that service and share with people how they can enroll in the TPS, as well.

What we do to go above and beyond the law, though, is that we also, when asked, do provide someone to be put on our master do-not-call list for all clients, so we not only maintain company-specific do-not-call lists, but we maintain a master do-not-call list.

MS. HARRINGTON: Do you have any sort of control quality measure on that? I mean, you have all these policies and procedures, but how do you know that your people are complying with them, if you know?

MR. BRUBAKER: Well, we have an in-depth training program, and we continually monitor our agents for adherence to the policies.

MS. HARRINGTON: But do you monitor specifically if someone says, Please put me on the do-not-call list, what's the monitoring on compliance with that request? Is there any -- is there any --

MR. BRUBAKER: We listen to make sure that if someone is asking to be on the list, to make sure that they're, indeed -- that that information is entered into the system. It's a simple disposition code, and it's

automatically registered on our system. So, we are making sure that happens and take it very seriously if someone does not comply with the procedures. You know, they're simply not working for us in the future. So, it's very important to us.

MR. HILE: How long does it take to process do-not-call requests?

MR. BRUBAKER: It's pretty much immediate, and we were talking about that earlier today. It's really an immediate process internally with respect to taking that person off the list, because once that code is entered, that person is not called back, unless there would be a duplicate file or something, but on a daily basis, that information is downloaded to our list, and then that is sent off to our client so they can update their database, as well.

And as I mentioned, our main emphasis is training quality control, educating our staff. We are real proud of the fact that we have many career opportunities for our staff. We have many communicators who have been with us five, ten years, many individuals who started on the phone and have become -- you know, have grown to management positions. I myself started 12 years ago as a communicator on the phone. So -- and now I oversee all our operations. So, there is great career

opportunity in our industry. Sometimes we forget about that.

And we really pride ourselves on low turnover. Our retention rate for employees who have completed their 30 days of training is nearly 95 percent. So, we don't have the turnover that has been talked about today, but just as Gordon mentioned earlier, we're proud to be telemarketers. We believe in our business, in the quality job we do for our clients, and we're looking forward to continuing our livelihood.

Thank you.

MS. HARRINGTON: Thank you, Steve. I would note that Ohio is probably in the midwest. That would account for the high retention rate, as Kathy would say.

Okay, Shelley Harms, last but not least.

MS. HARMS: Thank you very much. I'm Shelley Harms from Bell Atlantic, and I want to start out by thanking the FTC and the panel. This has just been a really interesting and useful day for us.

I wanted to add to the record on several points that were raised earlier. First of all, you had asked for what's the percentage of people on your do-not-call list, and I checked at the lunch break. Of our residential customer base, we have just over 20 percent

on Bell Atlantic's do-not-call list. I attribute that to good customer education, but you can think what you want I guess. It's -- it could also be, I was thinking about it, it could also be because our customers are in contact with us a lot. There's a lot of opportunities to tell us, please put us on your, you know, do-not-call list. I don't know if that's high for the industry or not, but that's the number.

The second point, why does it take so long to get your name on the list? Well, it does and it doesn't, and this is why we say don't count on it being on the list for 60 days, that's what we tell people. When you tell us to put your name on the do-not-call list, it does get into our database right away, but there may well be and there usually are campaigns in progress. For a particular marketing campaign, we will pull the list from -- sometimes up to six weeks in advance, and so that list may have been pulled right the day before you asked to be placed on our do-not-call list, and your name won't necessarily make it to that campaign for a certain number of -- amount of time.

Now, we do update the campaign lists, because the campaign lists have a life, maybe a -- I think it can be up to six months. We do try to update those monthly with the new requests that we get, but again,

depending on the timing, even though you're on our main database for do-not-call, you might still get a call if there's a campaign in the works.

MR. ANDERSON: Why are those pulled so early? I mean, why -- what is it that necessitates pulling that list six weeks ahead?

MS. HARMS: I don't exactly understand it, but I'm told that it's because of systems, systems work.

MR. DUNCAN: I think I can help a little bit with that. It's not just systems, but a lot of times those lists are tested for response. So, if you find a list that's been, say, made up of three or four composite lists and it tests well, then you want to go out -- say you test -- you wind up with 100 names on that list, then you want to make sure you're using that same composite group when you go out and do your actual campaign so you will have the same favorable response for it. So, you want to use the same one. You wouldn't want to go back and pull a different list from the one you tested.

MR. ANDERSON: But maybe the obligation ought to be that you ought to have to scrub more -- you know, I can understand that, but I can also understand saying, Well, then, you have to scrub two weeks before or something like that. I mean, it's an added expense and

there's costs and benefits.

MS. HARMS: It's also our opinion that it generally doesn't take 60 days for your name -- for this to benefit you, but we do say 60 days just in case, because you can see that the timing might work out that way.

The other point I wanted to raise is on the issue of whether to require telemarketers to transmit Caller ID, I checked on that, as well. It's true that telemarketing centers that use the T-1s or that use a -- I guess the precise term is a trunk-side connection, Caller ID cannot be transmitted, and that it's a very expensive and difficult thing to correct that.

And I was going to go on to talk about our Call Intercept. I do think the marketplace is starting to address that problem on its own.

Just on the idea of what can the industry do now, I think we have a very good rule right now. I think that the industry -- there are things we might want to consider to improve how it is, you know, is implemented, is enforced, and in the spirit of brainstorming, I haven't checked on whether we can do this or volunteer to do these kinds of things, but one thing might be to allow our customers to get on the do-not-call list by e-mail on the web.

Another might -- another thing might be when we're talking about industry guidelines, improving the industry guidelines, I think that in my experience, anyway, that there have been problems when outside companies have done telemarketing campaigns for us. I think sometimes those companies do not care as much about our reputation and our privacy issues as we do. We have had trouble sometimes in -- even I, when a customer complains, we have sometimes had trouble even tracking down whether a call was made to that customer from that other company. I think that when we're talking about guidelines, industry guidelines, it might be useful to talk about what kinds of things should be required of outside vendors who do your telemarketing campaigns.

And I think it also might be useful to have a best practices workshop. I thought it was very interesting to see what J. C. Penney does to make sure there aren't too many campaigns that might bother people. I think there might be a lot of companies that might have some good ideas about how to implement this, but those are just some ideas, and I want to again thank the panel very much.

MS. HARRINGTON: Well, thank you, and thank you for your good ideas.

That brings us to the end of the day here. Again, this is the very beginning of our review of the Telemarketing Sales Rule. Our discussion of these issues is that. We're interested in gathering information and learning, and the record for this subject will be open throughout the rule review. So, if anyone has anything more that they would like to contribute, we would really welcome that.

I want to thank all of the participants. I think that we have had a really high-quality discussion today and clearly a lot of thought and work has gone into this on your part, and I thank you for that, and thank you for coming to the FTC, and we look forward to seeing you again.

Thank you.

(Whereupon, at 4:42 p.m., the workshop was concluded.)

- - - - -

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: P994414CASE TITLE: TELEMARKETING SALES RULEHEARING DATE: JANUARY 11, 2000

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 1/24/2000

SUSANNE Q. TATE, RMR

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

DIANE QUADE