

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: 03-81105-CIV-COHN/SNOW

**CLOSED  
CIVIL  
CASE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SUN SPECTRUM  
COMMUNICATIONS  
ORGANIZATION, INC.,  
dba Royal Credit Solutions,

NORTH AMERICAN  
COMMUNICATIONS  
ORGANIZATION, INC.,  
dba Imperial Consumer Services,

WWCI2002, INC.,  
dba Beneficial Client Care,

9106-7843 QUEBEC, INC.,  
dba Intelagent Media,

WILLIAM H. MARTELL,

TRACEY A. BASCOVE,

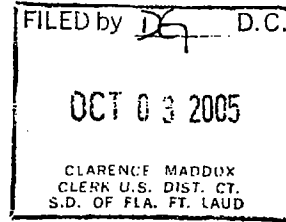
MITCHEL KASTNER,

RONALD CORBER,

and

JASON KASTNER,

Defendants.



STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57(b), the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), charging that Defendants engaged in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821. The Commission and Defendants 9106-7843 Quebec, Inc. (“Quebec, Inc.”), Mitchel Kastner, Ronald Corber (“Corber”), Jason Kastner, Sun Spectrum Communications Organization, Inc. (“Sun Spectrum”), North American Communications Organization, Inc. (“NACO”), WWCI2002, Inc. (“WWCI”), William H. Martell (“Martell”), and Tracey A. Bascove (“Bascove”) (hereinafter, collectively, “the Defendants”), hereby stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) to resolve all matters of dispute between them in this action.

**IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 57(b), 6101(b), and 6102(c), as well as 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of the Defendants are in or affecting “commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57(b).
5. The Defendants have entered into this Order freely and without coercion. The

Defendants further acknowledge that they have read the provisions of this Order, understand those provisions, and are prepared to abide by them.

6. The undersigned, individually and by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

7. The Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. The Defendants further waive and release any claim they may have against the Commission, its employees, representatives, or agents.

8. The Defendants agree that this Order does not entitle the Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and the Defendants further waive any right to attorneys' fees that may arise under said provision of law.

9. This Order does not constitute and shall not be interpreted to constitute an admission by the Defendants that they have engaged in violations of any law or regulation, including but not limited to the Federal Trade Commission Act.

10. Entry of this Order is in the public interest, and there being no just reason for delay, the Clerk is directed to enter judgment immediately.

#### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the

meaning of the term.

3. Unless otherwise specified, “the Defendants” means 9106-7843 Quebec, Inc. (“Quebec, Inc.”), Mitchel Kastner, Ronald Corber (“Corber”), Jason Kastner, Sun Spectrum Communications Organization, Inc. (“Sun Spectrum”), North American Communications Organization, Inc. (“NACO”), WWCI2002, Inc. (“WWCI”), William H. Martell (“Martell”), and Tracey A. Bascove (“Bascove”) as well as their assigns, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

4. Unless otherwise specified, “the Canadian Defendants” means 9106-7843 Quebec, Inc. (“Quebec, Inc.”), Mitchel Kastner, Ronald Corber (“Corber”), and Jason Kastner, as well as their assigns, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

5. Unless otherwise specified, “the Florida Defendants” means Sun Spectrum Communications Organization, Inc. (“Sun Spectrum”), North American Communications Organization, Inc. (“NACO”), WWCI2002, Inc. (“WWCI”), William H. Martell (“Martell”), and Tracey A. Bascove (“Bascove”), as well as their assigns, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

6. “Person” or “persons” means any individual, group, unincorporated association, limited or general partnership, corporation, or other entity.

7. “Plaintiff” means the Federal Trade Commission.

8. “Telemarketing” means any plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

9. “Credit-related products, programs, or services” means any product, program, or

service that is advertised, promoted, offered for sale, or sold to consumers as a method by which consumers may obtain information about credit, repair or improve their credit, or establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, lines of credit, or loans, or as a method by which consumers may consolidate or liquidate debt.

**ORDER**

**I.**

**BAN ON FUTURE TELEMARKETING ACTIVITIES**

**IT IS HEREBY ORDERED** that Quebec, Inc., Mitchel Kastner, Corber, Jason Kastner, Sun Spectrum, NACO, WWCI, Martell, and Bascove are permanently restrained and enjoined from engaging or participating in telemarketing of any credit-related products, programs, or services, directly or through any intermediary. Engaging or participating in telemarketing includes, but is not limited to, directing, supervising, providing consulting services to, providing brokering services to, providing planning services to, or otherwise providing advice related to telemarketing to any person or entity.

**II.**

**INJUNCTION AGAINST FALSE OR MISLEADING STATEMENTS**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of any credit-related products, programs, or services, the Defendants are hereby permanently restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer, including, but not limited to, any false or misleading representation that consumers who pay the Defendants a fee will receive, or are likely to receive, an unsecured major credit card, such as a Visa or MasterCard credit card.

**III.**

**INJUNCTION AGAINST VIOLATING THE TELEMARKETING SALES RULE**

**IT IS FURTHER ORDERED** that the Defendants are hereby permanently restrained and enjoined from violating or assisting any person in the violation of any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 *et seq.* (attached hereto as Appendix A), including, but not limited to, the following:

- A. Violating or assisting any person in the violation of Section 310.3(a)(2) of the

Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods or services that are the subject of a sales offer; and

B. Violating or assisting any person in the violation of Section 310.4(a) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a), by engaging in any abusive telemarketing act or practice.

#### IV.

#### INJUNCTION AGAINST VIOLATING SECTION 521 OF THE GRAMM-LEACH-BLILEY ACT

**IT IS FURTHER ORDERED** that the Defendants are hereby permanently restrained and enjoined from violating or assisting any person in the violation of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821 (attached hereto as Appendix B), including, but not limited to, inducing consumers to divulge their personal financial information by making any false, fictitious, or fraudulent representation, including, but not limited to, the following:

A. Any false, fictitious, or fraudulent representation that the Defendants are affiliated with, or calling from or on behalf of, a bank, financial institution, or credit card company; and

B. Any false, fictitious, or fraudulent representation that the Defendants already possess, and are merely verifying, consumers' prior credit applications.

#### V.

#### REDRESS AND OTHER EQUITABLE RELIEF FROM THE CANADIAN DEFENDANTS

**IT IS FURTHER ORDERED** that,

A. Judgment is entered jointly and severally against Quebec, Inc., Mitchel Kastner, Corber, and Jason Kastner in the amount of \$9,066,434; the Canadian Defendants shall pay the Commission \$405,589.50, on or before the fifth (5<sup>th</sup>) business day following the date of the entry of this Order by wire transfer to the Commission at Treasury ABA number: 021030004 (agency bank account -- via New York Federal Reserve Bank), Commission's ALC number: 29000001 (agency location code).

B. Upon timely making the payment provided in this Paragraph, the remainder of the judgment shall be suspended.

C. All funds paid by the Canadian Defendants to the Commission pursuant to this

Final Order may be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. The Canadian Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

## VI.

### **RIGHT TO ENFORCE SUSPENDED JUDGMENT AGAINST THE CANADIAN DEFENDANTS**

**IT IS FURTHER ORDERED** that,

A. The Commission's agreement to this Final Order is expressly premised upon the financial conditions of Quebec, Inc., Mitchel Kastner, Corber, and Jason Kastner as represented in the sworn financial statements provided to the Commission and dated December 19, 2003; December 22, 2003; December 23, 2003; December 24, 2003; and November 17, 2004, any amendments thereto submitted to the Commission through the date of this Order, and any sworn testimony regarding assets given by any Canadian Defendant through the date of this Order, which include material information upon which the Commission relied in negotiating and consenting to this Final Order. Quebec, Inc., Mitchel Kastner, Corber, and Jason Kastner state that those financial statements, any amendments thereto, and any sworn testimony regarding assets are complete and accurate representations of their financial conditions as of the date of this Order. The parties stipulate that the Commission's agreement to suspend the remainder of the \$9,066,434 judgment is expressly conditioned on the truthfulness, accuracy, and completeness of the Canadian Defendants' sworn financial statements, any amendments thereto, and any sworn testimony regarding their assets. The parties further stipulate that the Commission would not have agreed to suspend the remainder of the judgment if it had been aware that any such financial disclosure was not truthful, accurate, or complete. If, upon motion by the Commission, this

Court should find that Quebec, Inc., Mitchel Kastner, Corber, or Jason Kastner made a significant misrepresentation or omitted significant information concerning their respective financial conditions, then the Court shall enter a modified judgment holding that any such defendant is liable to the Commission in the amount of \$9,066,434, which Quebec, Inc., Mitchel Kastner, Corber, Jason Kastner, and the Commission stipulate, for the sole purpose of enforcement of this provision of the Order, is the amount of consumer injury caused by the Canadian Defendants. This amount, less the sum of payments made by any Defendant to the Commission, shall become immediately due and payable by any such Canadian Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

B. Quebec, Inc., Mitchel Kastner, Corber, and Jason Kastner agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.

C. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

## VII.

### **REDRESS AND OTHER EQUITABLE RELIEF FROM THE FLORIDA DEFENDANTS**

**IT IS FURTHER ORDERED** that,

A. Judgment is entered jointly and severally against Sun Spectrum, NACO, WWCI, Martell, and Bascove in the amount of \$9,066,434; the Florida Defendants shall pay the Commission \$9,600, on or before the fifth (5<sup>th</sup>) business day following the date of entry of this Order by wire transfer to the Commission at Treasury ABA number: 021030004 (agency bank account -- via New York Federal Reserve Bank), Commission's ALC number: 29000001 (agency location code).

B. Upon timely making the payment provided in this Paragraph, the remainder of the judgment shall be suspended.

C. All funds paid by the Florida Defendants to the Commission pursuant to this Final



Order may be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may use any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. The Florida Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

### **VIII.**

#### **RIGHT TO ENFORCE SUSPENDED JUDGMENT AGAINST THE FLORIDA DEFENDANTS**

**IT IS FURTHER ORDERED** that,

A. The Commission's agreement to this Final Order is expressly premised upon the financial conditions of Sun Spectrum, NACO, WWCI, Martell, and Bascove as represented in the sworn financial statements provided to the Commission and dated December 17, 2003, December 20, 2003, and September 10, 2004, any amendments thereto submitted to the Commission through the date of this Order, and any sworn testimony regarding assets given by any Florida Defendant through the date of this Order, which include material information upon which the Commission relied in negotiating and consenting to this Final Order. Sun Spectrum, NACO, WWCI, Martell, and Bascove state that those financial statements, any amendments thereto, and any sworn testimony regarding assets are complete and accurate representations of their financial conditions as of the date of this Order. The parties stipulate that the Commission's agreement to suspend the remainder of the \$9,066,434 judgment is expressly conditioned on the truthfulness, accuracy, and completeness of the Florida Defendants' sworn financial statements, any amendments thereto, and any sworn testimony regarding their assets. The parties further stipulate that the Commission would not have agreed to suspend the remainder of the judgment if it had been aware that any such financial disclosure was not truthful, accurate, or complete. If, upon motion by the Commission, this Court should find that Sun Spectrum, NACO, WWCI,

Martell, or Bascove made a significant misrepresentation or omitted significant information concerning their respective financial conditions, then the Court shall enter a modified judgment holding that any such defendant is liable to the Commission in the amount of \$9,066,434, which Sun Spectrum, NACO, WWCI, Martell, Bascove, and the Commission stipulate, for the sole purpose of enforcement of this provision of the Order, is the amount of consumer injury caused by the Florida Defendants. This amount, less the sum of payments made by any Defendant to the Commission, shall become immediately due and payable by any such Florida Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

B. Sun Spectrum, NACO, WWCI, Martell, and Bascove agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.

C. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

#### **IX.**

#### **LIFTING OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze against the assets of Quebec, Inc., Mitchel Kastner, Corber, Jason Kastner, Sun Spectrum, NACO, WWCI, Martell, and Bascove, pursuant to Section IV of the Stipulated Preliminary Injunction entered by this Court on February 5, 2004, shall be lifted for the sole purpose of transferring funds to the FTC pursuant to Paragraphs V and VII of this Final Order, and thereafter dissolved upon transfer of all such funds.

#### **X.**

#### **TRANSFER OF CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that the Defendants are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant for any credit-

related product, program, or service at any time prior to entry of this Order; *provided* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order or to any contractor or vendor of the Defendants for the purposes of billing Defendants' own charges only.

**XI.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that within five (5) business days of receipt of this Order as entered by the Court, Quebec, Inc., Mitchel Kastner, Corber, Jason Kastner, Sun Spectrum, NACO, WWCI, Martell, and Bascove each must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XII.**

**DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove shall distribute copies of this Order as directed below:

A. **Quebec, Inc., Sun Spectrum, NACO, and WWCI:** Quebec, Inc., Sun Spectrum, NACO, and WWCI each must deliver a copy of this Order to all of their principals, officers, directors, and managers. Additionally, Quebec, Inc., Sun Spectrum, NACO, and WWCI each must deliver a copy of this Order to all of their employees, agents, and representatives having responsibilities with respect to the subject matter of this Order. For current personnel, Quebec, Inc., Sun Spectrum, NACO, and WWCI each must deliver this Order within five (5) days after the date of service of this Order. For new personnel, Quebec, Inc., Sun Spectrum, NACO, and WWCI each must deliver this Order prior to the date that the new personnel assumes his or her responsibilities.

B. **Entities for which Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove is a Control Person:** For any business or other entity that Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove controls, directly or indirectly, serves as an officer or director, or in which Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove has a majority ownership interest, Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove must deliver a

copy of this Order to all principals, officers, directors, and managers of that business or entity. Additionally, Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove must deliver copies of this Order to all employees, agents, and representatives of any such business or entity who engage in conduct related to the subject matter of this Order. For current personnel, Mitchel Kastner, Corber, Jason Kastner, Martell, and Bascove must deliver this Order within five (5) days after the date of service of this Order. For new personnel, Mitchel Kastner, Corber, Jason Kastner, Martell, and Bascove must deliver this Order prior to the date that the new personnel assumes his or her responsibilities.

C. **Entities for which Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove is an Employee or Non-Control Person:** For any business or other entity that employs or contracts personal services from Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove and engages in conduct related to the subject matter of this Order, but is not controlled by Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove, Mitchel Kastner, Corber, Jason Kastner, Martell, or Bascove must deliver a copy of this Order to all principals and managers of such business or entity before becoming an employee or contractor.

D. Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove must each secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from each person to whom the defendant is required to deliver a copy of the Order pursuant to this Paragraph.

### XIII.

#### COMPLIANCE REPORTING BY DEFENDANTS

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order:

(1) Mitchel Kastner, Corber, Jason Kastner, Martell and Bascove shall each notify the Commission of the following:

(a) Any changes in the defendant's residence, mailing addresses, or telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in the defendant's employment status (including self-

employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the defendant's duties and responsibilities in connection with the business or employment; or

(c) Any changes in the defendant's name or use of any aliases or fictitious names;

(2) Mitchel Kastner, Corber, Jason Kastner, and Quebec, Inc. shall each notify the Commission of any changes in corporate structure to Quebec, Inc. or any other business entity that Mitchel Kastner, Corber, or Jason Kastner directly or indirectly controls or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the entity about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge; and

(3) Martell, Bascove, Sun Spectrum, NACO, and WWCI shall each notify the Commission of any changes in corporate structure to Sun Spectrum, NACO, or WWCI or any other business entity that Martell or Bascove directly or indirectly control or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the entity about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Mitchel

Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove shall each provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

(1) For Mitchel Kastner, Corber, Jason Kastner, Martell, and Bascove:

(a) The then-current residence address, and all mailing addresses and telephone numbers of the defendant;

(b) All then-current employment and business addresses and telephone numbers of the defendant, and for each such employer or business: a description of the business activities of that employer or business and the title and responsibilities of the defendant with that employer or business; and

(c) Any other changes required to be reported pursuant to subparagraph A of this Section.

(2) For Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove:

(a) A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XII; and

(b) Any other changes required to be reported pursuant to subparagraph A of this Section.

C. For the purposes of this Order, the Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Suite H-238  
Washington, D.C. 20580  
Re: FTC v. Sun Spectrum, Civil Action No. 03-81105.

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove.

#### XIV.

##### RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby each restrained and enjoined, in connection with any business that Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, or Bascove directly or indirectly manages, controls, or has a majority ownership interest in, from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order as required by Paragraph XII of this Order and all reports submitted to the FTC pursuant to Paragraph XIII of this Order.

## XV.

### AUTHORITY TO MONITOR COMPLIANCE

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove each shall submit additional written reports, sworn to under the penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide any representative or agent of the Commission with entry during normal business hours to any business location in such defendant's possession or direct or indirect control for inspection of the location and any documents or materials contained therein;

B. In addition, the Commission is authorized to monitor compliance with this Order by all lawful means, including but not limited to the following:

(1) obtaining discovery from any person, without further leave of the Court, using the procedures prescribed by Fed. R. Civ. P. 26-37 and 45;

(2) using representatives posing as consumers or suppliers to: Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, or Bascove; employees of Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, or Bascove; or any other entity managed or controlled in whole or in part by Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, or Bascove, without the necessity of identification or prior notice; and

C. Mitchel Kastner, Corber, Jason Kastner, Quebec, Inc., Sun Spectrum, NACO, WWCI, Martell, and Bascove shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair



or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**XVI.**

**FEEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

**XVII.**

**RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

**XVIII.**

**COMPLETE SETTLEMENT**

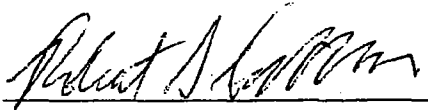
The FTC and the Defendants, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The FTC and the Defendants further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

SO ORDERED, this 3<sup>RD</sup> day of OCTOBER, 2005, at 3:45 p.m.

  
\_\_\_\_\_  
JAMES I. COHN  
UNITED STATES DISTRICT JUDGE

So Stipulated:

FOR THE PLAINTIFF:



ROBERT G. SCHOSHINSKI  
Special Florida Bar No. A5500684

JULIE G. BUSH

Attorneys

Federal Trade Commission

600 Pennsylvania Ave. NW

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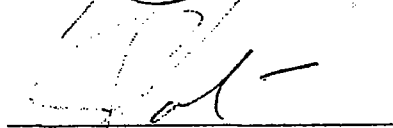
FOR THE CANADIAN DEFENDANTS:

9106-7843 Quebec, Inc.

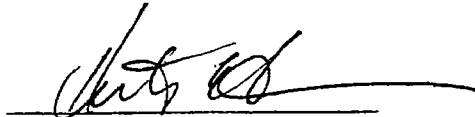
by Linnea

(title) President

  
Mitchel Kastner

  
Jason Kastner



Linnea  
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FOR THE FLORIDA DEFENDANTS:

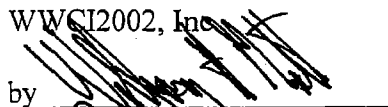

Sun Spectrum Communications Organization, Inc.

by   
(title) 

North American Communications Organization, Inc.

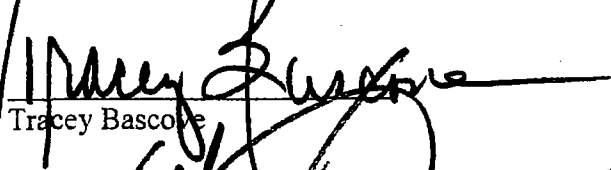
by   
(title) 

WWCI2002, Inc.


by   
(title) 



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## **APPENDIX A**

proposition that local retail shopping has, to date, been reduced as a result of inbound or outbound telemarketing. And, the fact remains that, other than DeHart, none of the commenters, including major sellers, telemarketers, and industry groups, provides any evidence relating to the potential for a national "do-not-call" registry to result in a reduction in service or an increase in cost for inbound telemarketing, nor in a concomitant increase in retail shopping done in local malls.

Moreover, the Commission believes there can be no hard evidence on which to base a prediction of consumers' actions following the implementation of the "do-not-call" registry provision. It seems likely, based on the experience of states that have implemented statewide "do-not-call" lists, and the overwhelmingly high response of consumers to the Commission's proposal, that many consumers will avail themselves of the opportunity to place their telephone numbers on the national "do-not-call" registry. However, as noted above, this may or may not have any impact on consumers' decision to shop at local malls, or on their choice of transportation. Thus, while consumer behavior may change as a result of the promulgation of amendments to the Rule, such changes cannot be quantified or even reasonably estimated because consumer decisions are influenced by many variables other than existence of the "do-not-call" registry. Any indirect impact of the amended Rule on the environment would therefore be highly speculative and impossible to accurately predict or measure.

The Commission does not believe that any alternative to creating a national "do-not-call" registry would both provide the benefits of the registry and ameliorate all potential concerns regarding environmental impact. For example, the Commission does not believe that given its justification for the necessity of the registry, eliminating the provision from the amended Rule would be appropriate based solely on the unsupported allegations of indirect environmental effect raised in the DeHart comment. Furthermore, the Commission can think of no alternative other than eliminating the national "do-not-call" registry that would address DeHart's unsupported and highly speculative concern.

In sum, although any evaluation of the environmental impact of the amendments to the TSR is uncertain and highly speculative, the Commission finds no evidence of avoidable adverse impacts stemming from the amended Rule. Therefore, the Commission has

determined, in accordance with § 1.83 of the FTC's Rules of Practice, that no environmental assessment or EIS is required.<sup>1075</sup>

#### List of Subjects in 16 CFR Part 310.

Telemarketing, Trade practices.

Accordingly, title 16, part 310 of the Code of Federal Regulations, is revised to read as follows:

#### PART 310—TELEMARKETING SALES RULE

##### Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Reserved: Fee for access to "do-not-call" registry.
- 310.9 Severability.

Authority: 15 U.S.C. 6101-6108.

##### § 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

##### § 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf

of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the

<sup>1075</sup> 16 CFR 1.83. See also *National Citizens Comm. for Broad. v. FCC*, 567 F.2d 1095, 1098 n.3 (D.C. Cir. 1977).

purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is

conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

### § 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays<sup>1</sup> for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods

or services that are the subject of the sales offer;<sup>2</sup>

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

<sup>1</sup> When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

<sup>2</sup> For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,<sup>3</sup> or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.<sup>4</sup> Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;<sup>5</sup>

(ii) Express oral authorization which is audio-recorded and made available

upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§ 310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating*. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering*. Except as expressly permitted by the applicable

credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions*. It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

#### § 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally*. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

<sup>3</sup> Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and Regulation Z, 12 CFR part 226.

<sup>4</sup> Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

<sup>5</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.



(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements

in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.*

(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive

outbound telephone calls established to comply with § 310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature<sup>6</sup> of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in

<sup>6</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§ 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than three (3) months prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed<sup>7</sup>; and

(iv) the seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) **Calling time restrictions.** Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) **Required oral disclosures in the sale of goods or services.** It is an abusive

telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) **Required oral disclosures in charitable solicitations.** It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution.

**§ 310.5 Recordkeeping requirements.**

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and

the amount paid by the customer for the goods or services;<sup>8</sup>

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

**§ 310.6 Exemptions.**

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

- (1) The sale of pay-per-call services subject to the Commission's Rule

<sup>7</sup> This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

<sup>8</sup> For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a

customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

#### **§ 310.7 Actions by states and private persons.**

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 [Reserved: Fee for access to "do-not-call" registry.]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark.

Secretary.

Note: Appendices A and B are published for informational purposes only and will not be codified in Title 16 of the Code of Federal Regulations.

Appendix A

List of Acronyms for Rule Review Commenters

February 28, 2000 Request for Comment

Acronym — Commenter

AARP—AARP  
 Alan—Alan, Alicia  
 ARDA—American Resort Development Association  
 ATA—American Teleservices Association  
 Anderson—Anderson, Wayne  
 Baressi—Baressi, Sandy  
 Bell Atlantic—Bell Atlantic  
 Bennett—Bennett, Douglas H.  
 Biagiotti—Biagiotti, Mary  
 Bishop—Bishop, Lew & Lois  
 Blake—Blake, Ted  
 Bowman-Kruhm—Bowman-Kruhm, Mary  
 Braddick—Braddick, Jane Ann  
 Brass—Brass, Eric  
 Brosnahan—Brosnahan, Kevin  
 Budro—Budro, Edgar  
 Card—Card, Giles S.  
 Collison—Collison, Doug  
 Conn—Conn, David  
 Conway—Conway, Candace  
 Croushore—Croushore, Amanda  
 Curtis—Curtis, Joel  
 Dawson—Dawson, Darcy  
 DMA—Direct Marketing Association  
 DSA—Direct Selling Association  
 Doe—Doe, Jane  
 ERA—Electronic Retailing Association  
 FAMSA—FAMSA-Funeral Consumers Alliance, Inc.  
 Gannett—Gannett Co., Inc.  
 Garbin—Garbin, David and Linda  
 A. Gardner—Gardner, Anne  
 S. Gardner—Gardner, Stephen  
 Gibb—Gibb, Ronald E.  
 Gilchrist—Gilchrist, Dr. K. James  
 Gindin—Gindin, Jim  
 Haines—Haines, Charlotte  
 Harper—Harper, Greg  
 Heagy—Heagy, Annette M.  
 Hecht—Hecht, Jeff  
 Hickman—Bill and Donna  
 Hollingsworth—Hollingsworth, Bob and Pat  
 Holloway—Holloway, Lynn S.  
 Holmay—Holmay, Kathleen  
 ICFA—International Cemetery and Funeral Association

Johnson—Johnson, Sharon Coleman  
 Jordan—Jordan, April  
 Kelly—Kelly, Lawrence M.  
 KTW—KTW Consulting Techniques, Inc.  
 Lamet—Lamet, Jerome S.  
 Lee—Lee, Rockie  
 LSAP—Legal Services Advocacy Project  
 LeQuang—LeQuang, Albert  
 Leshner—Leshner, David  
 Mack—Mack, Mr. and Mrs. Alfred  
 MPA—Magazine Publishers of America, Inc.  
 Manz—Manz, Matthias  
 McCurdy—McCurdy, Bridget E.  
 Menefee—Menefee, Marcle  
 Merritt—Merritt, Everett W.  
 Mey—Mey, Diana  
 Mitchel—Mitchel  
 TeleSource—Morgan-Francis/Tele-Source Industries  
 NACHA—NACHA-The Electronic Payments Association  
 NAAG—National Association of Attorneys General  
 NACAA—National Association of Consumer Agency Administrators  
 NCL—National Consumers League  
 NFN—National Federation of Nonprofits  
 NAA—Newspaper Association of America  
 NASAA—North American Securities Administrators Association  
 Nova53—Nova53  
 Nurik—Nurik, Margy and Irv  
 PLP—Personal Legal Plans, Inc.  
 Peters—Peters, John and Frederickson, Constance  
 Reese—Reese Brothers, Inc.  
 Reynolds—Reynolds, Charles  
 Rothman—Rothman, Iris  
 Runnels—Runnels, Mike  
 Sanford—Sanford, Kanija  
 Schiber—Schiber, Bill  
 Schmied—Schmied, R. L.  
 Strang—Strang, Wayne G.  
 TeleSource—Morgan-Francis/Tele-Source Industries  
 Texas—Texas Attorney General  
 Thai—Thai, Linh Vien  
 Vanderburg—Vanderburg, Mary Lou  
 Ver Steegt—Ver Steegt, Karen  
 Verizon—Verizon Wireless  
 Warren—Warren, Joshua  
 Weltha—Weltha, Nick  
 Worsham—Worsham, Michael C., Esq.

Appendix B

List of Acronyms for NPRM Commenters

Acronym — Commenter

1-800-DoNotCall—1-800-DoNotCall, Inc.  
 AARP—AARP  
 ACA—ACA International  
 ACUTA—ACUTA  
 Advanta—Advanta Corp.  
 Aegis—Aegis Communications Group  
 Alabama Police—Alabama State Police Association, Inc.  
 AAST—American Association of State Troopers  
 ABA—American Bankers Association  
 ABIA—American Bankers Insurance Association  
 American Blind—American Blind Products, Inc.  
 ACE—American Council on Education  
 ADA—American Diabetes Association  
 AmEx—American Express

AFSA—American Financial Services Association  
 Red Cross—American Red Cross  
 ARDA—American Resort Development Association  
 ARDA-2—American Resort Development Association-Do Not Call Registry  
 American Rivers—American Rivers  
 ASTA—American Society of Travel Agents  
 ATA—American Teleservices Association  
 Blood Centers—America's Blood Centers  
 Community Bankers—America's Community Bankers  
 Ameriquest—Ameriquest Mortgage Company  
 Arney—Arney, The Honorable Dick (U.S. House of Representatives)  
 AFP—Association of Fundraising Professionals  
 APTS—Association of Public Television Stations  
 ANA—Association of National Advertisers  
 Associations—joint comment of: American Teleservices Association, Direct Marketing Association, Electronic Retailing Association, Magazine Publishers Association, and Promotion Marketing Association  
 Assurant—Assurant Group  
 Avinta—Avinta Communications, Inc.  
 Ayres—Ayres, Ian  
 Baldacci—Baldacci, The Honorable John Elias (U.S. House of Representatives)  
 BofA—Bank of America  
 Bank One—Bank One Corporation  
 Beautyrock—Beautyrock, Inc.  
 BellSouth—BellSouth Corporation  
 Best Buy—Best Buy Company, Inc.  
 BRI—Business Response Inc.  
 CCAA—California Consumer Affairs Association  
 CATS—Californians Against Telephone Solicitation  
 Capital One—Capital One Financial Corporation  
 Car Wash Guys—WashGuy Systems  
 Carper—Carper, The Honorable Thomas R. (U.S. Senate)  
 Celebrity Prime Foods—Celebrity Prime Foods  
 Cendant—Cendant Corporation  
 Chamber of Commerce—Chamber of Commerce of the United States of America  
 CRF—Charitable Resource Foundation, Inc.  
 Chicago ADM—Chicago Association of Direct Marketing  
 Childhood Leukemia—Childhood Leukemia Foundation  
 CDI—Circulation Development, Inc.  
 CURE—Citizens United for Rehabilitation of Errants  
 Citigroup—Citigroup Inc.  
 Civil Service Leader—Civil Service Leader  
 Collier Shannon—Collier Shannon Scott  
 Comcast—Comcast  
 CNHI—Community Newspaper Holdings, Inc.  
 Community Safety—Community Safety, LLC  
 Connecticut—Connecticut Commissioner of Consumer Protection  
 CBA—Consumer Bankers Association  
 CCC—joint comment of: Consumer Choice Coalition, ACI Telecentrics, Coverdell & Company, Discount Development Services, HSN LP d/b/a HSN and Home Shopping Network, Household Credit Services, MBNA America Bank, MemberWorks

**APPENDIX B**

**C**

**Effective: November 12, 1999**

United States Code Annotated Currentness

Title 15. Commerce and Trade

Chapter 94. Privacy

Subchapter II. Fraudulent Access to Financial Information

**→§ 6821. Privacy protection for customer information of financial institutions**

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person--

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a) of this section.

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of--

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial

institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b) of this section.

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.