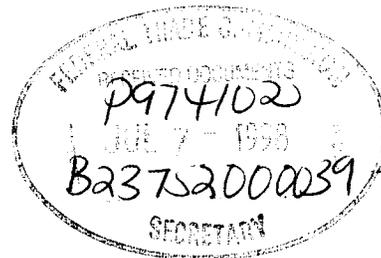


NationsBank



July 6, 1998

Secretary
Federal Trade Commission
Room H-159
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Interpretation of Rules and Guides for Electronic Media -- Comment
FTC File No. P974102

Dear Sir or Madam:

NationsBank Corporation ("NationsBank") is pleased to provide comments on the Federal Trade Commission's consideration of applicability of current rules and guides to newer forms of electronic media. NationsBank, headquartered in Charlotte, North Carolina, is a bank holding company that provides financial products and services nationally and internationally to individuals, businesses, corporations, institutional investors and government agencies. NationsBank has primary retail and commercial banking operations in 16 states and the District of Columbia. As of March 31, 1998, NationsBank had total assets of \$315 billion.

NationsBank shares the Commission's beliefs that the use of this new technology should be encouraged and that the interests of consumers must be safeguarded. However, clarification of the existing rules and guidelines which are applicable to electronic media would be helpful. Specific comments are attached.

We appreciate this opportunity to comment. Should you have any questions regarding our comments, please contact Ben C. Smith, Senior Vice President, at (336) 805-3588.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick M. Frawley".

Patrick M. Frawley
Director, Regulatory Relations

Attachment

**NationsBank Corporation Comments Regarding
Interpretation Of Rules And Guides For Electronic Media
FTC File No. P974102**

NationsBank Corporation welcomes this opportunity to comment on issues to be addressed in a future Federal Trade Commission ("Commission") policy statement on advertising products and services and conducting commercial activities using electronic media. While the Commission does not have any direct jurisdiction over banks' web sites, we acknowledge the pervasive influence of some of its policies and rules and therefore appreciate the opportunity to comment from the perspective of our industry. The following comments are offered in response to several of the questions which the Commission has raised. For brevity, the corresponding questions have not been restated.

There would also be value in convening a workshop to afford interested parties a further opportunity to express their views, provided that efforts are made to reach a consensus among participants and Commission staff.

Applicability of Rules and Guides to Electronic Media

1) The Commission has indicated that it does not intend to issue a policy statement which will constitute either new rules or substantive amendments to its current rules. However, unless some degree of flexibility is afforded in the interpretations, the unintended effect could be to constrain emerging uses of electronic media which are not adverse to consumers' interests. How the rules are clarified will determine whether adequate (and beneficial) guidance is provided.

2) Consumers will benefit if the Commission's proposed policy statement has the effect of encouraging the use of electronic media to promote a wider array of products and services at lower cost. However, the converse is true if the interpretations result in greater restrictions than are necessary to ensure that offerings are neither unfair nor deceptive. In these instances, the customer may be inconvenienced, may not be informed of products or services in which he would have had an interest, or may ultimately pay a portion of the added cost of alternative delivery channels.

3) Unless advertisers are permitted to have consumers scroll down the same page to view a disclosure, the Commission's position on the "unavoidability" of electronic disclosures will place significant burdens on them. In many instances, disclosures will not fit on the same screen as the information that triggered them. It is necessary to scroll down to view the disclosure because of small screen size, the amount of space taken up by the browser window, the length of the preceding text or the disclosure itself. Scrolling is a normal part of viewing information with which all users of electronic media are very familiar. Rather than restricting scrolling, we recommend that the consumer be required to either scroll through the disclosure, or click a button affirming that the disclosure has been read and accepted, prior to being able to make application or purchase. Either approach would be sufficiently "clear and conspicuous," even if the consumer had elected to click to and back from another page in the interim. How this and other rules are interpreted could subject advertisers to significant costs related to revamping their web sites.

Interpretation of Terms

4) We agree with the Commission's proposed interpretations of the terms "written," "writing," and "printed," to include electronic material which can be preserved in a tangible form and read. Additionally, we concur that "direct mail" encompasses electronic communications, including fax and E-mail messages, that are individually addressed and capable of being received privately.

7) We don't believe that targeted advertising should be categorized as the electronic equivalent of "direct mail." Use of this technology continues to evolve; therefore, it is too early to attempt to regulate it. In our opinion, targeted marketing is no different than other forms of broadcast advertising directed toward particular customer segments. In the case of targeted advertising, information may be customized based upon what the consumer has indicated an interest in on prior visits to our web sites. This form of advertising is not, for example, transmitted to an E-mail mailbox. Rather it is only offered when the consumer visits the web site.

9) The Commission's interpretation of "direct mail" should be limited to communications which are capable of being received privately. Disclosures related to messages posted on Internet bulletin boards provided by sponsoring site, USENET groups, both of which are considered public forums, and other forms of advertising should be driven by "trigger terms."

10) For the reasons given in our response to question seven, neither Web page nor banner advertisements that are targeted to certain consumers should be characterized as "direct mail." These and other forms of on-line targeted marketing should be allowed to evolve without undue restrictions.

11) We agree that the consumer should not be confused, distracted (which is very difficult to define since this varies by individual), given insufficient time to read the disclosure, prevented from accessing the disclosure at any time, or denied the right to consent to being provided an electronic disclosure. However, given the limitations on some consumers' ability to download and view graphics or listen to audio, as well as their tendencies to skip over portions of straight text, the rules on what constitutes a "clear and conspicuous" or "prominent" disclosure must afford some flexibility. Reasonable efforts to ensure that the disclosure is brought to the consumer's attention should be sufficient.

Disclosures

13) How the proposed factors for evaluating disclosures are defined will determine whether or not they provide adequate guidance. Again, we urge the Commission to consider our comments with respect to the scrolling issue and the avoidance of over-regulation of evolving technologies.

14) The costs of applying the factors proposed by the Commission will be determined by how much flexibility is afforded. If the rules are too narrowly defined, the cost of compliance, in the form of web site modifications, could be burdensome and have the effect of stifling the growth of this technology and denying consumers convenient access to useful information.

15) Individual consumers' Web browser and computer capabilities vary widely. This makes it impossible to design Web pages which are optimal for every user. However, since advertisers have both a duty and a strong vested interest in making their Web pages and disclosures as accessible and user friendly as possible, they will naturally take these considerations into account when designing them.

16) Consumers have the option not to view graphics or hyperlink to text on other pages and consequently may not read the disclosures. For this reason, scrolling offers the advantage of greater "unavoidability." To hinder the use of these technologies, however, is inadvisable. Ultimately, the consumer bears some responsibility for reading and understanding the disclosures which are provided.

17)-a. How consumers behave in navigating through a Web site varies by individual user. Factors include the personality, interest and sophistication of the individual and the content of the Web site.

17)-b. Consumers are more likely to examine the top of a Web page when they are simply trying to determine if the subject matter interests them. If so, they will typically scroll down through the page.

17)-c. Information placed within a separate frame is not necessarily more likely to be noticed. For example, navigation instructions within separate frames are often ignored.

18)-a&b. Whether or not features such as pop-ups, animation, flashing or rolling graphics, enhance or detract from prominence varies by user. Furthermore, these features may not be accessible or utilized by all users. We do not think that they should be considered in determining whether the disclosure is prominent. Rather, the relative prominence of the disclosure to an invitation to apply or purchase, the ability to scroll through, link to, or acknowledge having seen or reviewed the disclosure provides general guidance while maintaining flexibility in determining whether a disclosure is effectively communicated on electronic media.

19) It seems more reasonable to require that the consumer indicate either that: "I have seen/reviewed" the disclosure, rather than that the disclosure is "understood."