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FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

In the Public Hearing on: )  
DO-NOT-CALL WORKSHOP. )  
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JUNE 6, 2002

MARRIOTT WARDMAN PARK HOTEL  
MARRIOTT BALLROOM SALONS 1 & 2  
WASHINGTON, D.C.

The above-entitled matter came on for  
conference, pursuant to notice, at 9:00 a.m.

WORKSHOP MODERATORS:

- EILEEN HARRINGTON
- KATIE HARRINGTON-MCBRIDE
- ALLEN HILE
- MICHAEL GOODMAN
- KAREN LEONARD
- CAROLE DANIELSON

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P R O C E E D I N G S

PANEL ON PREDICTIVE DIALERS:

JEFF KRAMER, AARP

MATT MATTINGLY, ATA

ARTHUR CONWAY, Dial America

JERRY CERASALE, DMA

LINDA GOLDSTEIN, ERA

RITA COHEN, MPA

REX BURLISON, NAAG

ANNE SCHNEIDER, NAAG

SUSAN GRANT, National Consumers League

MALLORY DUNCAN, National Retail Federation

JOHN MURRAY, Newspaper Association of America

CHAR PAGAR, PMA

MICHAEL MCKINLAY, Sytel Limited

1 MS. HARRINGTON: I think I'm going to begin a  
2 little differently this morning. First, I would like to  
3 know who's here and who's not, so I'm going to read the  
4 name of each organization that we think should be  
5 represented at the table and ask its representative to  
6 indicate their presence and tell us who you are, okay?

7 AARP?

8 MR. KRAMER: I'm here. Jeff Kramer with AARP.

9 MS. HARRINGTON: ATA?

10 MR. MATTINGLY: Matt Mattingly.

11 MS. HARRINGTON: Dial America?

12 MR. CONWAY: Art Conway.

13 MS. HARRINGTON: DMA?

14 MR. CERASALE: Jerry Cerasale.

15 MS. HARRINGTON: ERA?

16 MS. GOLDSTEIN: Linda Goldstein.

17 MS. HARRINGTON: Magazine Publishers?

18 MS. COHEN: Rita Cohen.

19 MS. HARRINGTON: Can we get rid of that  
20 feedback, please?

21 NAAG?

22 MR. BURLISON: Rex Burlison and Anne Schneider.

23 MS. HARRINGTON: National Consumer's League?

24 MS. GRANT: Susan Grant.

25 MS. HARRINGTON: The National Retail

1 Federation?

2 MR. DUNCAN: Mallory Duncan.

3 MS. HARRINGTON: The Newspaper Association of  
4 America?

5 MR. MURRAY: John Murray.

6 MS. HARRINGTON: PMA?

7 MS. PAGAR: Char Pagar.

8 MS. HARRINGTON: Sytel Limited?

9 MR. MCKINLAY: Michael McKinlay.

10 MS. HARRINGTON: Yesterday I asked that we that  
11 we have someone from the Consumer Choice Coalition join  
12 us.

13 MR. BOWATER: Jonathan Bowater from the Consumer  
14 Choice Coalition.

15 MS. HARRINGTON: What's your name again?

16 MR. BOWATER: Jonathan Bowater.

17 MS. HARRINGTON: Jonathan Bowater?

18 MR. BOWATER: Yes.

19 MS. HARRINGTON: Thank you. Is there anyone at  
20 the table, besides the FTC staff, whose organization I  
21 didn't name?

22 Okay. Let's once again have the FTC staff  
23 introduce themselves too. Keith, do you want to begin?

24 MR. ANDERSON: Keith Anderson.

25 MS. DANIELSON: Carole Danielson.

1 MR. GOODMAN: Michael Goodman.

2 MR. HILE: Allen Hile.

3 MS. HARRINGTON-MCBRIDE: Katie  
4 Harrington-McBride.

5 MS. HARRINGTON: Eileen Harrington.

6 MS. LEONARD: Karen Leonard.

7 MS. HARRINGTON: Great. Once again, let me  
8 invite, as I see some of you have done, those of your  
9 who are here observing to move your chairs up as close  
10 as you might.

11 I want to take a moment this morning to clarify  
12 a couple of points before we get into our discussion.  
13 I'm told by my colleagues that there is a little bit of  
14 buzz, particularly from the industry participants, that  
15 the decision on do-not-call has already been made, and  
16 let me tell you that's not the case.

17 The Federal Trade Commission has proposed a  
18 national do-not-call registry. If we didn't think the  
19 idea and if the Commission didn't think that the idea  
20 has merit, it wouldn't have proposed it, but it is truly  
21 out for comment, and one of the most important areas of  
22 consideration and areas where we need a great deal of  
23 input concerns implementation.

24 What would the challenges, cost, benefits be, as  
25 well as issues about -- could you please get rid of that

1 feedback -- as well as concerns about the relationship  
2 between a possible federal law and system and existing  
3 state laws and ones that are coming online and systems.

4 So we're really looking for comment on that, and  
5 I just want to disavow anyone of the notion that this  
6 decision has been made. It has been not been.

7 We will be reviewing the entire record. We will  
8 be analyzing it. We will, at the staff level, make a  
9 recommendation to the Commissioners.

10 The Commissioners will consider that. They will  
11 study the record. There's a lot more work and thought  
12 that will go into this before the Commission finishes  
13 this rule review and rule amendment proceeding.

14 Now, the same thing is true for each and every  
15 of the issues that we are discussing. There has been no  
16 decision made, but the Commission has proposed  
17 amendments and is genuinely interested in everyone's  
18 comments and particularly cost benefit comments, both  
19 for consumers and for business, so that's where we are.

20 Is there anything else that we need to cover?.

21 MS. LEONARD: Speaking into the microphone,  
22 please.

23 MS. HARRINGTON: Speak into the microphone,  
24 please, please, please.

25 MS. LEONARD: Bring it close to you.

1 MS. HARRINGTON: Bring it close to you, but  
2 don't breathe heavily into the microphone when you're  
3 not speaking.

4 MR. HILE: If you don't get close to it, we  
5 can't hear it, and he has to turn it up, and that's why  
6 we're getting the feedback, so you need to really get  
7 right op on it.

8 MS. LEONARD: The audience members can't hear  
9 you.

10 MS. HARRINGTON: Let me also do one quick check  
11 on process. Are there any process questions from the  
12 participants this morning, any feedback for us on the  
13 process at this workshop, any concerns other than the  
14 one that I have just addressed, which I understand is a  
15 concern that the decision has been made which, in fact,  
16 it hasn't been?

17 Well, let's get to it. This morning we're going  
18 to continue by talking about predictive dialers, and  
19 what we are interested in developing as much information  
20 on the record for are the questions in the agenda,  
21 so let's just begin.

22 What are the costs of zero abandonment to  
23 sellers and telemarketers, and a corresponding question,  
24 what are the costs to consumers of dead air and delayed  
25 interaction? As much specific information about costs

1 that can be provided would be very helpful.

2 Jon, right?

3 MR. BOWATER: Jonathan.

4 MS. HARRINGTON: Jonathan. Did you write your  
5 name on your tent?

6 MR. BOWATER: I didn't know. I actually have  
7 this from yesterday.

8 MS. HARRINGTON: Why don't we pass Jonathan a  
9 magic marker and he can write his name on the back of  
10 that tent so everybody can remember who he is.

11 MR. BOWATER: We actually may be changing with  
12 David. It may be David.

13 MS. HARRINGTON: That's fine. David's name is  
14 on the other side. We have several switch outs here,  
15 and then we have, of course, Linda Goldstein with nine  
16 different name placards for each of her capacities.  
17 We're going to impose a special tax on you, per name  
18 placard.

19 MS. GOLDSTEIN: That's fair.

20 MR. BOWATER: I'm a colleague of Jim Miller's  
21 and a coauthor of the Economic Study that was introduced  
22 by him yesterday.

23 We calculated that significant costs would be  
24 passed on to consumers if a zero abandonment rule is  
25 enforced.

1           We understand that currently an industry average  
2 would be around 14 calls per hour that could be handled,  
3 and if zero abandonment were enforced, that would fall  
4 to around about eight calls per hour. I should stress  
5 that it varies considerably given the products that are  
6 being sold.

7           Some products will actually have much fewer  
8 that can be handled per hour technology products, but we  
9 calculate that if that fall in number of calls per hour  
10 occurred, that some \$19 million will be added to the  
11 cost of selling through outbound telemarketing, which we  
12 equate to around \$6 per sale transacted.

13           That's an 80 percent increase in the cost of  
14 transacting a sale, and it would take the cost of  
15 transacting a sale from somewhere around 9 percent of  
16 the value of the products to somewhere around 16 percent  
17 of the value of the product.

18           These are all costs that would be passed on to  
19 the consumer ultimately and need to be weighed against  
20 any perceived benefits from reduced abandoned calls.

21           MS. HARRINGTON: Can you tell me more about your  
22 basis for these conclusions and estimates?

23           MR. BOWATER: We calculated based on information  
24 on the value of the total number of outbound calls and  
25 what we understand to be a typical average value in a

1 sale, a telemarketing sale.

2 MS. HARRINGTON: Where did you get that  
3 information?

4 MR. BOWATER: The WAFE study had estimated that  
5 274 -- I think that's right, \$274 billion was the value  
6 of outbound sales. We understand that the average sale  
7 value is around about \$85, and again that varies  
8 widely.

9 It's very hard to get an extra figure on what it  
10 is, and it depends on the product, but we understand  
11 that that's a reasonable figure, and that gives you a  
12 number of calls that -- I'm sorry, the number of sales  
13 that took place.

14 Given what we understand is a typical conversion  
15 to sales rate, we grossed up to what would be then the  
16 number of calls that were made, and as I said at the  
17 beginning, the number of calls that can be made with  
18 predictive dialing is considerably more than can be made  
19 without and considerably more to be made if you had a  
20 zero abandonment rate.

21 So we calculated how many hours that would take  
22 to have made those calls, and given what we understand  
23 of the cost per hour, we were able to calculate how much  
24 more it would cost. That was a basic base to that  
25 calculation.

1 MS. HARRINGTON: Thank you. Katie has a  
2 question.

3 MS. HARRINGTON-MCBRIDE: I do have a question,  
4 and specifically actually for you, Jonathan, but anyone  
5 at the table who has information on this.

6 One of the comments, in fact some of the  
7 comments suggest that a zero abandonment rate is not  
8 even a technological feasibility, and I think we might  
9 want to begin with that, if it is technologically  
10 infeasible, then I think we're talking about  
11 something higher than zero anyway.

12 Can anyone speak to that issue? Can a  
13 predictive dialer be set to a zero abandonment rate?

14 MS. HARRINGTON: If not, how low can it go? Do  
15 you know, Jonathan?

16 MR. BOWATER: Actually, I understand that it is  
17 technically very difficult, and my colleague, who is  
18 also representing Consumer Coalition, may be able to  
19 answer that question better than I can.

20 MS. HARRINGTON: Who is that?

21 MR. BOWATER: David Mussman?

22 MS. HARRINGTON: Is he here?

23 MR. MUSSMAN: I'm here.

24 MS. HARRINGTON: David, don't leave the table,  
25 Jonathan, but why don't we just have you up here.

1           MR. MUSSMAN: By its nature what a predictive  
2 dialer is, as Art from Dial America can tell you, you're  
3 trying to predict when you have an agent available and  
4 match up that agent with the call from the consumer, and  
5 as Jim Miller, I think said yesterday, the fact that  
6 you're predicting means you can't be zero or you're not  
7 predicting anymore.

8           If you have go to zero, then you no longer have  
9 a predictive dialer, then you have a dialer, so if you  
10 use the definition of predictive dialer, you cannot get  
11 it to zero, and it's no longer predictive.

12           MS. HARRINGTON: Keith, a question?

13           MR. ANDERSON: No, I was going to try to clarify  
14 I think Katie's question.

15           As I understand it, yes, you could have zero  
16 abandonment, but what that would amount to is in each  
17 instance, you would have to wait until a person was off  
18 the phone and then dial a new number, so you wouldn't  
19 use the predictive dialer because you wouldn't pay for  
20 that equipment to dial ahead, but you could go to zero.

21           It would be quite possible, but what you would  
22 do is you go would back to where we were 20 years  
23 ago. The agent finishes a call. Somebody makes a new  
24 call on his behalf. If nobody's home, the agent sits  
25 there while you make a series of calls until somebody

1 answers.

2 MS. HARRINGTON: Art and then John.

3 MR. CONWAY: Art Conway, Dial America.

4 On the question of the cost of zero abandonment,  
5 zero abandonment, you're not in a predictive mode  
6 anymore.

7 You're still going to have abandoned calls  
8 because someone is going to pick that phone up just as  
9 you're picking up, after it's rung four times, and  
10 they're going to think that's an abandoned call because  
11 they're going to pick it up, and nobody is there.  
12 That's an isolated incident, and that can happen whether  
13 it's a telemarketing call or a personal call.

14 We looked at the cost, and company wide, we  
15 contact roughly 28 people an hour. When we go into what  
16 we call a pace mode, a non predictive mode, zero  
17 abandonment rate, that goes down about 17 or 18, so  
18 we're looking at a 40 to 50 percent increase in the cost  
19 of a sale, if you can keep the same conversion rate.

20 Now, that cost, in some cases, is going to be  
21 passed on to the consumer, and I know yesterday that was  
22 brought up and, somebody said, No way, that gets to the  
23 consumer.

24 I'm going to give you a real example, one that  
25 we've dealt with, where a client, a seller, is offering

1 a product and looks at the cost, the order cost of that  
2 product as the acquisition cost, which say would be the  
3 telemarketing cost, and any promotional cost they built  
4 into the offer, for example, the first 30 days free.

5 So if they're looking at an order cost, and  
6 let's say they're selling one sale an hour, at 28 leads  
7 an hour, you would need an hour and a half to get a sale  
8 in a pace mode, a non predictive mode.

9 It's going to cost another \$14 for that sale.  
10 That's \$14 they're going to take out of the other  
11 incentives they're going to provide to the consumer to  
12 make that purchase.

13 In other words, that sale to the consumer is  
14 going to cost \$14 more because maybe they don't give the  
15 first month free. Maybe it's \$14 a month for some  
16 service. They don't give the first month free. They  
17 can't afford to do it.

18 So that can be a real pass along cost to the  
19 consumer right up front, and we have cases where that's  
20 happened, so there is a real cost to go to a zero  
21 abandonment rate, not just to the sellers and the  
22 telemarketers, but certainly in some cases directly to  
23 the consumer, I'm sure, and in far more cases indirectly  
24 to the consumers.

25 MS. HARRINGTON: John?

1           MR. MURRAY: John Murray. In your response to  
2 the question about is it technically possible, quite  
3 honestly, I don't really know, but I have operated and  
4 worked and supervised small groups who were using the  
5 predictive dialer firsthand, and to me, what I do know  
6 though is you have a human error in there, and you've  
7 set it at a certain pace, perhaps shooting for no  
8 abandonments by the time the night is over.

9           Then this telemarketer thinks of a joke to tell  
10 to this telemarketer, and you're reaching for a glass of  
11 water, so you're a little bit slower than the machine  
12 thought you were going to be, and boom, you can do that.

13           The smaller the operation, because I'm talking  
14 if it was a ten up person operation, I've taken 30  
15 percent of the work force out, it's more likely to  
16 happen.

17           So I guess my point is that zero I don't think  
18 takes into account the human factor regardless of the  
19 technical factor. People make mistakes, do what they're  
20 not supposed to do.

21           MS. HARRINGTON: Jerry?

22           MR. CERASALE: Both Art and John covered my  
23 points.

24           MS. HARRINGTON: Kudos. Rita?

25           MS. COHEN: We did a little informal research in

1 anticipation of this, and what we found out was that I  
2 think the older equipment, they never anticipated that  
3 you might set an abandonment rate of zero, so we  
4 understand that some of the older equipment, you  
5 actually cannot do that, and so we think that smaller  
6 companies in particular, who may have the older  
7 equipment, would have to make a tremendous investment if  
8 they had to set it to zero, so that would be an  
9 additional cost for them.

10 MS. HARRINGTON: Let's sort of go back a little  
11 bit to the do-not-call discussion that we had  
12 yesterday. If consumers had a greater opportunity to  
13 place their numbers on do-not-call lists, and I'm  
14 particularly interested from the consumer groups on this  
15 question, would that mitigate the concerns about  
16 abandoned calls and predictive dialers? Jeff?

17 MR. KRAMER: Jeff Kramer, AARP. I think it  
18 would mitigate it some, yes. A lot of the concerns we  
19 have with predictive dialers, and if we can't go to  
20 zero, we'll live with that, but some of the concerns we  
21 have with predictive dialers are certainly with older  
22 Americans and particularly older women, and we do hear  
23 complaints from them, just the concern when they pick up  
24 the phone and there's no one there.

25 There's a fear factor associated with that, and

1 not many people outside of the industry understand  
2 predictive dialers, so they don't know what's going on.  
3 They think there's someone trying to find out if they're  
4 home or just trying to scope out the house.

5 So the do-not-call registry would certainly  
6 reduce a lot of those calls, but there are concerns with  
7 the exemptions and stuff, so there's still predictive  
8 dialers. There still would be some of those situations,  
9 but it certainly would mitigate the situation.

10 MS. HARRINGTON: Susan? Could we get rid of the  
11 feedback? Thanks.

12 MS. GRANT: Susan Grant, National Consumers  
13 League. It might reduce the number of abandoned calls  
14 that consumers get, although it's clear that it wouldn't  
15 totally eliminate them, and I appreciate the  
16 Commission's need to document, to try to assess the cost  
17 that might result from a zero abandonment rate, but  
18 if you look at it as we do from the premise of abandoned  
19 calls being per se violations of the rule to begin with,  
20 then I think it's unfair for businesses to complain  
21 about loss of profit from doing something that is  
22 illegal to start with.

23 I would hope that that would be taken into  
24 consideration as well as the increased efficiencies that  
25 businesses will realize from do-not-call lists that will

1 help them more narrowly target their solicitations to  
2 consumers who want to hear from them to begin with, so  
3 that they won't be wasting as much time and money on  
4 calls that don't generate any revenue to begin with.

5 MS. HARRINGTON: Let me just clarify that the  
6 legal issue that we think arises with the use of the  
7 predictive dialers isn't from the use of the predictive  
8 dialer. It's the absence of a disclosure at the  
9 beginning of the transaction, and an obvious fix for  
10 that would be to permit some kind of recorded message,  
11 which violates the TCPA.

12 So there are other statutes that are implicated  
13 here. Perhaps one improvement would be some  
14 modification to the TCPA to permit information to be  
15 provided in a way that doesn't create the problems that  
16 TCPA was intended to address, which were the situations  
17 where consumers picked up their phone, there was a  
18 recorded message on and they couldn't disconnect. That  
19 was a huge problem, and that was driving the enactment  
20 of the TCPA at that time.

21 I don't know whether the technology is different  
22 now so that if that kind of mechanized disclosure were  
23 permitted, consumers would always have the ability to  
24 disconnect. That's the issue I think there, but that's  
25 an issue for Congress. I just note it for the record.

1 Jerry?

2 MR. CERASALE: Yes. Jerry Cerasale, DMA. I  
3 don't think industry fully agrees at this point on the  
4 legal question. I just raise that. I know it's not a  
5 part of the discussion here, but I just couldn't let it  
6 go that it's a per se violation. We don't necessarily  
7 agree with that.

8 I do want to raise with the Commission that even  
9 if you could go to zero, you will not eliminate  
10 abandoned calls even beyond the discussion that Art  
11 raised, that you can't get to -- even manual calls will  
12 get abandoned.

13 The group that is purchasing predictive dialers  
14 to the greatest extent right now are debt collectors,  
15 and another group that's purchasing a significant number  
16 of predictive dialers is government trying to use them  
17 to get ahold of citizens.

18 If you're going to use a predictive dialer,  
19 you're going to get abandoned calls, so abandoned calls,  
20 hang up calls, people thinking someone is going to be  
21 casing the house or whatever the case are not,  
22 absolutely not going to be eliminated, even if the FTC  
23 rule applied to everyone across the board. Many  
24 abandoned calls are not necessarily telemarketing calls.

25 MS. HARRINGTON: Rex?

1           MR. BURLISON: Missouri allows or defines a  
2 person to include computerized calling. We have  
3 considerable consumer complaints about abandonment. The  
4 problem is is that when they receive the hang up, more  
5 often than not, the caller ID is blanked out, so even  
6 though we have it under our no-call opt, we can't  
7 enforce one of the biggest problems we have, and that is  
8 hang ups and consumers' fear and consumers' complaints.

9           What can we do about it? Well, we can't do  
10 anything about it because they didn't talk to anybody,  
11 and there's nothing on the Caller ID, so that has to go  
12 hand in hand.

13           I'm not sure what the answer is as to how to  
14 ensure who's using predictive dialers, how to ensure  
15 that you'll always be able to capture an ID on there. I  
16 don't know if there's a registration for the use of that  
17 equipment or not.

18           MS. HARRINGTON: We're going to be talking in  
19 the next session about a proposal concerning mandatory  
20 Caller ID basically, and I'm struck by how much of this  
21 discussion about predictive dialers really touches on  
22 some other parts of the proposed amended rule,  
23 do-not-call, Caller ID, that sort of thing.

24           We'll have Art and Linda and then Rita and  
25 Anne.

1           MR. CONWAY: Art Conway, Dial America. Our  
2 sense is that the abandonment rate in telemarketing is  
3 way too high. The DMA has a guideline out there of 5  
4 percent, and we believe it's way over 5 percent.

5           There is a practice out there today where  
6 predictive dialers are used to call consumers. If the  
7 consumer answers the phone, the dialer hangs up. If it  
8 detects an answering machine, it leaves a recorded  
9 message on the answering machine. That practice, while  
10 very efficient from a marketing standpoint, you're  
11 delivering a message to a consumers' answering machine  
12 for 7 to 10 cents, cheaper than the mail, and the  
13 consumer is always going to listen to it for the most  
14 part. They don't have to open the envelope.

15           MS. HARRINGTON: Should that particular practice  
16 be prohibited, Art?

17           MR. CONWAY: It's 100 percent abandonment rate.  
18 Of course it should be.

19           MS. HARRINGTON: Let's just talk about that  
20 specific practice. Is there anyone here who thinks that  
21 that shouldn't be prohibited, that is, setting a  
22 predictive dialer to always hang up when a live voice  
23 answers? Is there anyone who thinks that that should  
24 not be prohibited? Jerry, do you want to stand in front  
25 of that train?

1 MR. CERASALE: No, I don't want to stand in  
2 front of that train. We think the TCPA prohibits that  
3 practice already.

4 MS. HARRINGTON: What's the theory?

5 MR. CERASALE: That you're not calling to try  
6 and make a call. You don't have a live person. You  
7 don't have a live person ready to answer the phone, so  
8 it violates that recording provision. That's what we  
9 tell our members when we find that.

10 MS. HARRINGTON: Art, do you want to continue.

11 MR. CONWAY: It does if there's an advertisement  
12 in the message. If it's a commercial message with no  
13 advertisement, it doesn't violate that, but there's an  
14 exception for that in the TCPA. The TCPA says that you  
15 cannot have a recording delivered to a residential  
16 line. It doesn't mention consumer. It mentions  
17 residential line, and I've got it on my answering  
18 machine at home, and it's from a satellite dish company  
19 trying to sell me a satellite dish. It's a recording  
20 that was delivered to a residential line that's in  
21 violation of TCPA, and I don't see the TCPA or the FCC  
22 doing anything about it.

23 I come back to, I think part of why some of this  
24 stuff doesn't work is there's no enforcement with it.  
25 The point I made yesterday with the company specific

1 do-not-call list. I have to ask, Does that not work  
2 because there isn't any enforcement that goes along with  
3 it. We're in favor of enforcement where we see abuses.

4 This hundred percent abandonment rate thing,  
5 leaving a message, that's just a killer for the  
6 industry. You do that, you have no choice but to come  
7 up with zero abandonment. The only way you're going to  
8 get rid of that zero abandonment rate, you have to do  
9 zero abandonment rate.

10 That's just plain not right to market that way.

11 MS. HARRINGTON: Okay. Linda?

12 MS. GOLDSTEIN: I guess just picking up on Art's  
13 point, and Jerry already made some of the points I  
14 wanted to make, I just wanted to reiterate for the  
15 record that the opposition is to a zero abandonment rate  
16 because of the practical feasibilities associated with  
17 that, but the industry already supports a rate, a more  
18 reasonable rate of 5 percent or whatever that rate might  
19 be.

20 So I think it's not the industry position, as  
21 Art is suggesting, that there be no limits on this at  
22 all. The industry would support some more reasonable  
23 approach such as a 5 percent rate, which is consistent  
24 with the DMA guidelines.

25 MS. HARRINGTON: Rita?

1 MS. COHEN: We also had said --

2 MS. HARRINGTON: Use your mike, please.

3 MS. COHEN: We also had supported the idea that  
4 there should be a lower rate that could be implemented  
5 reasonably by industry, and I did want to reiterate that  
6 there are groups that will not be subject to that, and  
7 so there certainly are a lot of messages that are left  
8 where there's an intention to reach a message machine.

9 The other thing I was going to say is that the  
10 DMA does have a guideline on predictive dialing, and one  
11 of the provisions of it is that you should allow the  
12 phone to ring four times, but I think in talking to some  
13 of those in the industry, you could tremendously reduce  
14 the number of abandoned calls if you allowed the  
15 telemarketer to hang up after one ring when they  
16 realized that they did not have anyone available.

17 So that is a balance. It may answer some of  
18 Jeff's concerns about the abandoned call. It would be  
19 one ring, and then the telemarketer would disconnect.

20 MS. HARRINGTON: Anne? While you're getting  
21 your microphone, let me turn to Katie for a question.

22 MS. HARRINGTON-MCBRIDE: The question I have is  
23 sort of a two-parter. Some suggest in the comments that  
24 the 5 percent abandonment rate that is recommended by  
25 some industry organizations is not adhered to, and I

1 think I need to put that on the table. It's in the  
2 comments, and I think that if that's not being adhered  
3 to, maybe something we need to discuss is how is it  
4 enforced?

5 Do people have to submit any sort of records  
6 about how they set their dialers, and is that even  
7 possible, and then I think the other question is, If at  
8 5 percent, if everyone were in adherence, we've heard a  
9 figure of 9 billion calls a year, and that would result,  
10 according to my almost always imperfect math, to  
11 something like 1.2 million hang-ups a day.

12 I think that just a quantification of that may  
13 be useful, and I think the question may become, What are  
14 the costs to consumers of 1.2 million trips to the phone  
15 to be disappointed and find out there's no one there or  
16 frightened to think that someone was there but they hung  
17 up because they have some nefarious purpose?

18 MS. SCHNEIDER: I wanted to say on behalf of  
19 NAAG and consistent with what was said in our comments  
20 that to the ordinary consumer, a single hang-up is not  
21 acceptable. That is not a cost that they want to pay  
22 for telemarketing. It strikes them as unfair, whether  
23 it's 67,000 phone calls during dinner, as calculated by  
24 Private Citizen, or whether it's 10,000 phone calls  
25 during any given hour, it doesn't matter.

1           When the individual consumer is called, and  
2           there's no one at the end of the line, it's a prank  
3           call, and they're irritated, and they do define it as an  
4           abusive practice to an extent, and I don't think that  
5           any of us in government should be sanctioning this  
6           practice by setting some standard less than zero or  
7           greater than zero.

8           MS. HARRINGTON: Michael? Speak into your mike,  
9           please.

10          MR. MCKINLAY: In fact, there are four things  
11          which dialers do to generate productivity, and all of  
12          these need to be looked at. Three of them are touched  
13          upon in the DMA guidelines, and one is covered actually  
14          by the TCPA.

15          If you look at these, if you start with the  
16          point which Rita or someone made, in the DMA guidelines,  
17          there's a rule which says that you must let the number  
18          ring for at least 12 seconds, in other words, give  
19          someone a chance to answer the phone. Typically people  
20          take 10 seconds to answer the phone. 12 seconds goes  
21          beyond that.

22          To actually cut that down is probably  
23          unreasonable. In other words, people rushing for the  
24          phone, it's rung once, and then it just stops ringing  
25          and then maybe that happens again.

1           I don't really think consumers would want that,  
2    so I think what DMA have done in their guidelines is  
3    going in the right direction.

4           The second thing is of course abandoned calls as  
5    we understand them, that you ring someone, there's no  
6    agent free, and you just drop the call.

7           The third thing of course is dead air calls, and  
8    these are caused by two things. One is answering  
9    detection, and the other is the fact that dialers will  
10   keep the line open hoping that an agent is going to  
11   become free.

12           This practice is widespread in this country and  
13   overseas, and typically dialers will keep lines open for  
14   up to eight or ten seconds. People do actually hang on  
15   because they want to find out what goes on on the line.  
16   I do suggest that you read the submission submitted by Art  
17   Conway, which looks at this in great detail. It's an  
18   expose of why this practice should be stopped.

19           The fourth thing of course is that dialers leave  
20   messages on answering machines, so again they don't have  
21   to hang on the call. This is covered by the TCPA, and I  
22   find it surprising that no one has done anything about  
23   it, so if you're going to have those four dialers, you  
24   want to control what they do, limit the use, limit the  
25   extent of non agent calls, you have to look at all four

1 of these practices on their own.

2 If you don't, as California has not done, as  
3 Kansas has not done, you're going to leave a gap that  
4 people will exploit.

5 MS. HARRINGTON: Matt?

6 MR. MATTINGLY: Matt Mattingly, ATA. Let me  
7 address Katie's question, if I could. The question of a  
8 voluntary standard, there is one obviously, as espoused  
9 by the DMA, of 5 percent.

10 We did an informal survey of our membership to  
11 see, first of all, how many of our call centers do have  
12 a standard that they adhere to, and in those cases where  
13 they do have a standard, what that is. We found that  
14 some 95 percent of all call centers do have a standard,  
15 even though one is not required by law. They have one  
16 as a good business practice.

17 More than 80 percent of those that do have a  
18 standard operate is at 5 percent or less abandoned call  
19 rate, which of course does leave a percentage of those  
20 that are greater than 5 percent.

21 MS. HARRINGTON-MCBRIDE: Do you know what the  
22 highest rate is that's afforded?

23 MR. MATTINGLY: For those that are over 5  
24 percent, the average, I would say, would be in the range  
25 of 9 to 12 percent, and those tend to be independent

1 call centers, service provides that have multiple  
2 clients, and so the rate is established by contract per  
3 client.

4 The highest rate that I'm aware of that any  
5 single call center had was 19 percent, and it may not  
6 surprise you to learn that that call center was heavily  
7 involved in political campaign. When it comes to --

8 MS. HARRINGTON: I hope the candidate lost.

9 MR. MATTINGLY: When it comes to political  
10 campaigning, there is a whole other standard involved  
11 here, which is basically there is no standard, and I  
12 find great irony in the fact that among the greatest  
13 critics of abandoned call rates are politicians that  
14 ignore them when it comes to their own reelection  
15 possibility.

16 I'm aware of one contract in which the  
17 abandonment rate for a political campaign, who shall  
18 remain nameless, was set by contract at 75 percent.  
19 Now, what can you do about that? If you say, I have  
20 scruples and I'm not going to take that contract,  
21 they'll just go someplace else, and there will be people  
22 that they will find that will do this.

23 MS. HARRINGTON-MCBRIDE: Can I interject? Are  
24 these non DMA members doing these calling campaigns? It  
25 seems to me that the incentive to adhere to the 5

1 percent rate, regardless of what contractually you're  
2 asked to do, would be that you would want to retain your  
3 membership in DMA.

4 Jerry?

5 MR. CERASALE: Okay. I didn't do the survey  
6 that Matt had done. I don't know the basis of ATA's  
7 practice.

8 MR. HILE: Give him their names, please.

9 MR. CERASALE: We have only one political  
10 campaign group that's a member of DMA through our  
11 nonprofit federation, so we don't have politicians that  
12 are members of the DMA, so that that would cause some  
13 problem for us in trying to look at that.

14 I think, Matt, what percentage had 5 percent  
15 that were there that you had seen, were at 5 percent or  
16 below of your survey?

17 MR. MATTINGLY: About 85 percent.

18 MR. CERASALE: And you can never say never, but  
19 none of the people above 85 percent were not DMA  
20 members. I would never, ever say that because you don't  
21 know, but that's the case.

22 If we find it, we go after it. We get  
23 complaints, and we go through our ethics committee, and  
24 we have a new telemarketing ethics committee that we  
25 just established.

1 I did, Katie, want to do one thing now that you  
2 put the spotlight on me, to respond to your numbers from  
3 Private Citizen.

4 Using the Private Citizen numbers, if you  
5 took -- and we use 13, not 14. We had found 13 calls an  
6 hour rather than 14, so my numbers are at 13. The  
7 number of calls that Private Citizen claims are made to  
8 residences would require 6 million teleservices reps to  
9 work at eight hours a day.

10 Now, our records show that 6 million Americans  
11 work in the telemarketing area, in outbound  
12 telemarketing, and that would include fulfillment,  
13 supervision and so forth, so those numbers can't be  
14 used, and you can't use the number of phone calls to a  
15 house because that's why you use predictive dialers  
16 because a lot of people aren't home, and so that's a  
17 phone call.

18 It's not part of the 5 percent that's used in an  
19 abandonment rate. Abandonment rate is the percentage of  
20 calls answered by an individual that are not connected  
21 because there is not a live teleservices rep, a live  
22 agent to talk to them.

23 MS. HARRINGTON-MCBRIDE: The numbers actually  
24 that I was citing to were mentioned in the comments.  
25 The other material I think were only distributed

1 yesterday, and I had thought of this question before  
2 then. Do you know what would be a good number to work  
3 with?

4 MR. MATTINGLY: For an abandonment rate?

5 MS. HARRINGTON-MCBRIDE: How many calls a day  
6 are abandoned? How many calls are made and are  
7 abandoned.

8 MR. MATTINGLY: Well, I think if I could, to  
9 follow up on one of Jerry's points, one of the problems  
10 that we found in conducting this survey and asking for  
11 abandonment rates, how do you define an abandonment  
12 rate? We find that even among our own members, people  
13 interpret that differently.

14 Jerry mentioned a percentage of calls answered.  
15 Others that I'm aware of figure it as a percentage of  
16 calls made, dialed, so let me turn the tables here and  
17 ask our friends at the FTC how you define abandonment  
18 rate, or have you made that decision yet?

19 MS. HARRINGTON-MCBRIDE: Well, we're trying to  
20 get at sort of the number of calls per day and how many  
21 of those there are hang-ups on when consumers come to  
22 the phone to answer. I think that many of the comments  
23 have pointed toward facets of predictive dialers, the  
24 answering machine detection and other things that can  
25 cause that, but what we I think are still having trouble

1 agreeing on are how many calls are made per day total,  
2 and then if we can figure out from that number what  
3 percentage are abandoned, I'm pretty sure we can get to  
4 what number are abandoned.

5           It would help us I think on the record to  
6 know if we're talking about if zero is impractical or  
7 impossible, we've talked about 5 percent, but we haven't  
8 talked about anything in the middle, and I think it  
9 would be much easier to do that with concrete numbers on  
10 the table, so can anyone give us those numbers?

11           MR. MATTINGLY: I think one of the problems  
12 you'll encounter in doing that and as we encountered  
13 during the survey is defining an abandonment rate and  
14 how you measure it I heard by day, and there are a lot  
15 of circumstances in which those rates are tracked by  
16 day, but there are almost as many, if not more, in which  
17 the rates are tracked not by day but by campaign.

18           So particularly for an independent call center  
19 with multiple clients, you measure the abandonment rate  
20 by campaign, which may last weeks. Now, you would have  
21 some intervening measurement that you would use to see  
22 if you would need to adjust the rate as you go, but it's  
23 not as simple as saying, What is the rate per day  
24 because it's not measured in that way in all cases.

25           MR. HILE: Do the contracts always cover this?

1 MR. MATTINGLY: No.

2 MR. HILE: Is there a contract term and a  
3 standard arrangement that you have?

4 MR. MATTINGLY: In most cases, if a specific  
5 rate is not specified by contract, most centers will  
6 revert to a default standard that they maintain for  
7 their center in most cases. I can't say across the  
8 board that that's the case.

9 MS. HARRINGTON: Matt, let me go back to the  
10 threshold question. How many outbound calls are placed  
11 a day, do you think?

12 MR. MATTINGLY: I don't know that I could even  
13 hazard a guess there.

14 MS. HARRINGTON: Art, do you have a thought?

15 MR. CONWAY: I will have to get back to you on  
16 that.

17 MS. HARRINGTON: Jerry?

18 MR. CERASALE: I don't have the statistics, but  
19 I've got some people at work trying to see if we have  
20 it, if I can get it.

21 MS. HARRINGTON: Okay. It would be helpful to  
22 know that.

23 Linda?

24 MR. CONWAY: You just want predictive dialers,  
25 right, or all calls?

1 MS. HARRINGTON: No, I think both all calls, and  
2 if you can give us the subset of calls generated by  
3 dialers, that would be good, but we would like to know  
4 how many outbound calls are placed today.

5 MR. CONWAY: In the industry, for the industry?

6 MS. HARRINGTON: Yes. Linda, and then we'll go  
7 back to Katie. Keith, do you have a question down  
8 there?

9 MR. ANDERSON: I just wanted to see if I could  
10 clarify one of the things that Matt just said. You're  
11 telling me that some of the people who reported a 5  
12 percent rate are telling you they abandon 5 percent of  
13 the calls they make?

14 I just did a little calculation. We assume that  
15 -- I have seen figures of 12 percent of the calls made  
16 get answered.

17 MR. MATTINGLY: The answer to your question is,  
18 yes, some people have told us that. How prevalent is  
19 that? I don't know, and this only came to light as we  
20 were trying to define abandonment rate and how you  
21 measure it, and I think out of the 2,500 ATA members, I  
22 can recall 2 that said that they measured as a  
23 percentage of the calls dialed.

24 Now, 2 out of 2,500 is not a prevalent  
25 practice.

1 MR. ANDERSON: It makes a big practice.

2 MR. MATTINGLY: It certainly does, but it does  
3 raise and make the point that there's not agreement on  
4 how you measure an abandoned calls.

5 If I could go to Katie's other comment about the  
6 number of abandoned calls, if you would take a  
7 percentage, you use the 9 billion figure, I have two  
8 sons who are CPAs who have instructed me on how to  
9 manipulate statistics to show just about anything.

10 When you talk raw numbers and big numbers, yes,  
11 they do sound awfully big, but we need to place that  
12 into context. When we're talking about the number of  
13 abandoned calls today, we don't have one household  
14 running to the phone 1.2 million times.

15 We're talking a hundred million households, and  
16 if that is the abandonment rate or the error rate, I'm  
17 sure the airlines would love to have an error rate like  
18 that, so I just want to put that into context.

19 MS. HARRINGTON: Linda, before we jump down to  
20 you, Art is just dying to say something about this.

21 MR. CONWAY: First of all, Matt, I have to take  
22 exception with what you said in the USA Today because my  
23 wife's parents definitely wanted her to marry a  
24 telemarketer.

25 MR. MATTINGLY: Art, I would just say that of

1 all the things that I have ever said that appeared in  
2 print, that has definitely gotten the most feedback.

3 MR. CONWAY: Secondly, how to measure the  
4 abandoned rate, I believe that's very clear in the DMA  
5 guidelines on how to measure the abandonment rate. It's  
6 the calls answered plus the calls abandoned is the  
7 denominator, and the calls abandoned is the numerator.

8 I mean, as far as I know the only guidelines --  
9 does the ATA have a guideline on abandonment rate?

10 MR. MATTINGLY: Well, that's my question to the  
11 FTC, how do you interpret an abandonment rate? I think  
12 we're trying to figure that out.

13 MS. HARRINGTON: We're trying to figure that  
14 out, and I'm not sure why the ATA needs us to figure  
15 that out because you guys are telemarketing experts.  
16 We're not.

17 MR. MATTINGLY: We're the ones that would have  
18 to comply with the standard. We want to make sure we  
19 have a definition we can use.

20 MS. HARRINGTON: Is this an issue of concern to  
21 the ATA? The DMA has raised this as an issue of  
22 concern. Whether their 5 percent rate is adequate or  
23 not is one of the things that we're discussing here, but  
24 it seems as though there's a lot of public resentment  
25 about these abandoned calls and that it's something that

1 the industry associations, regardless of what happens  
2 with this rule, should have front and center as a matter  
3 for concern.

4 MR. MATTINGLY: Do I interpret that to mean then  
5 that you accept the DMA standard?

6 MS. HARRINGTON: No. I just said I did not, but  
7 what I don't accept is that if the ATA's position is  
8 that they're going to wait until the Federal Trade  
9 Commission defines precisely what is meant by an  
10 abandonment, that's a great disappointment.

11 MR. MATTINGLY: By that, do you mean you're  
12 expecting us to propose one that you would bless or  
13 not?

14 MS. HARRINGTON: No. No, Matt. What I'm saying  
15 is I'm not impressed with the apparent lack of concern  
16 for this as a public problem. That's all I'm saying.

17 MR. MATTINGLY: How would you come to that  
18 conclusion?

19 MS. HARRINGTON: Based on what you've said.

20 MR. MATTINGLY: That we have asked the FTC for a  
21 definition of the abandonment rate?

22 MS. HARRINGTON: No, that the association hasn't  
23 been more proactive in identifying this as a serious  
24 concern and instructing its members, in some way, to do  
25 better.

1           MR. MATTINGLY: Well, I guess we'll agree to  
2 disagree there.

3           MS. HARRINGTON: Okay. Linda?

4           MS. GOLDSTEIN: I wanted to try to put this in  
5 some perspective and I think in particular respond to  
6 one comment that Anne made, which is that one abandoned  
7 call is intolerable and that based on that, there could  
8 be no justification, apart from the legal issues, for  
9 accepting anything above a zero abandonment rate.

10           I think we have to step back for a moment and  
11 think about some of what has been established. It has  
12 been established that there is a cost to going from some  
13 reasonable abandonment rate to a zero abandonment rate  
14 because functionally that will really mean the  
15 elimination of predictive dialers, and there's a lot of  
16 evidence in the record about the cost efficiencies that  
17 predictive dialers afford.

18           I think we have to keep in perspective one fact  
19 we do know. I appreciate the frustration that we can't  
20 give you the number of outbound calls per day, but we do  
21 know that there have been \$274 billion in sales via  
22 outbound telemarketing. That's a lot of people who do  
23 enjoy purchasing products over the telephone.

24           For those people, there is also a cost of going  
25 to a zero abandonment rate because the cost of goods to

1     them will increase, so I think what we're really looking  
2     for here is a balance, and we have to really look at  
3     this issue in tandem with other things that the  
4     Commission is looking at.

5             If, Anne, there was a consumer for whom one  
6     abandoned call is intolerable, they can go on the  
7     do-not-call list. There may be other things we can do  
8     via the Caller ID discussion, which in combination  
9     should reduce this problem.

10            I certainly don't think any of us sitting here  
11     around the table representing industry are suggesting  
12     that this is not a problem that should be addressed.  
13     We're talking about, What's the most cost effective and  
14     efficient means, both for industry and for consumer who  
15     ultimately would have to absorb the higher cost to  
16     address this issue.

17            If there's a combination of things through a  
18     list, through Caller ID provisions and through some  
19     reasonable standard for predictive dialers, then that's  
20     the approach I think we should consider.

21            Finally on this discussion of the definition of  
22     an abandoned call, I don't think we're trying to be glib  
23     here on this. I know that even amongst some of our  
24     members, there actually is a lack of clarity about how  
25     an abandoned call is defined, and certainly we can come

1 back to you and propose some definition, but I think the  
2 only point we would want to make is that if there is  
3 something in the rule about abandoned rates, we should  
4 have a clear definition in the rule as well about how we  
5 define an abandoned call.

6 MS. HARRINGTON: Susan and then Rita and Jerry,  
7 did you want to speak too?

8 MR. CERASALE: At the end, yes.

9 MS. GRANT: Susan Grant, National Consumers  
10 League. I think that the thing that is most important  
11 for the Commission to remember here is that the  
12 efficiencies that the telemarketing industry has gained  
13 as a result of using predictive dialers is a burden  
14 that's borne entirely by consumers and resulting in  
15 abandoned calls.

16 We don't have any idea whether efficiencies that  
17 have been gained have reduced the cost of products or  
18 services that have been sold in telemarketing. We've  
19 got no substantiation for that. We do know that it has  
20 reduced the need for as many telemarketing employees,  
21 which is ironic since a lot of the other arguments of  
22 the industry about the Commission's proposed rule  
23 changes express concern about losing more jobs.

24 This has certainly helped to eliminate jobs,  
25 without any proof of corresponding benefits to consumers

1 and causing consumers not only the emotional cost that  
2 we've heard about, but something that privacy expert Bob  
3 Gillman describes as the privacy toll, the costs that  
4 consumers have to go to to try to find out who's been  
5 calling them, with payment for Caller ID and other  
6 services and the lack of productivity in consumer  
7 households with the time that's spent having to put  
8 themselves on do-not-call lists and doing other things  
9 to try to defend themselves from these practices.

10 So when we talk about balance, I think that the  
11 balance has to be tilted in favor of consumers here.

12 MS. HARRINGTON: Let's see. Rita, I think  
13 you're up.

14 MS. COHEN: I think we have to also keep in mind  
15 the same issue that came up yesterday and is certainly  
16 something that the Commission needs to keep in mind.  
17 Will the public really get a decrease based on what we  
18 do, given the companies and types of industries that are  
19 not covered under the FTC's jurisdiction under the TSR,  
20 the banks, the common carriers, the insurance company,  
21 the political fund raisers, and the high abandonment  
22 rates particularly on political fund raisers that we  
23 found as high as 70 percent.

24 We may not get our abandonment rate of the  
25 covered segments down low, and yet the public may still

1 perceive that there is abandoned calls, and so we're  
2 good players. We're trying to get the rate down, and  
3 yet the public may not perceive that there's been enough  
4 done.

5 MS. HARRINGTON-MCBRIDE: If I could just jump in  
6 for a moment, I think that implicit in Susan's comments  
7 was a request for information substantiating any cost  
8 benefit that consumers have realized because of  
9 predictive dialers, and I would just encourage anyone at  
10 the table to either supplement the record in writing or  
11 to speak up here at the table during this discussion on  
12 that point, that would certainly be something that would  
13 be very helpful.

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

16 MR. ANDERSON: I just wanted to throw another  
17 question out there. We've heard some numbers, and  
18 people may not have them today, but for the record,  
19 we've heard some discussion of the cost of going from  
20 say a 5 percent rate down to a zero rate.

21 I would be curious to know what happens if you  
22 go to 2 percent rate? What happens if you go to a 1  
23 percent rate?

24 MR. CONWAY: We're working on that. As we  
25 speak, we're working on it because we're faced with this

1 California situation. We're trying to see what the cost  
2 is to go down to 3 percent. The next thing we have to  
3 work on is, okay, what happens if we go down to 1  
4 percent.

5 We can do this because again, all the calls we  
6 do, they're all centralized. We have one algorithm that  
7 we can use to drive the abandonment rate across all our  
8 branches. It's not a branch by branch situation, so  
9 we're in a great position here to go figure out what the  
10 cost is to this.

11 I'm not saying that 5 percent is the right  
12 number. What I'm saying, and I'll advocate the DMA 5  
13 percent because I believe that abandonment rates are  
14 well above that. If we got it down to 5 percent, that  
15 means you're going to get one abandoned call for every  
16 19 telemarketers you talk to.

17 That's 5 percent, right? Do your own survey in  
18 your house. Count the number of telemarketers you talk  
19 to. Count the number of abandoned calls. I'll tell you  
20 in my household it's not 5 percent. Sometimes it's up  
21 30, 40 percent, and I agree, it's a real problem out  
22 there.

23 I would like to see something done with it. I  
24 don't believe people are following the DMA guideline. I  
25 think if the FTC came out with a guideline, it's a

1 little harder when -- not harder in a difficult sense,  
2 but harder in a real sense coming from the FTC than it  
3 is the DMA. The DMA has a voluntarily guideline out  
4 there. I don't believe it's being followed.

5 The second thing is on your zero abandonment  
6 rate, I don't want -- and I don't quite know how to say  
7 this, but there's certain calls, telemarketing calls I  
8 may get and I may want, but I don't want necessarily my  
9 mother-in-law to know what those calls are about.

10 So if my mother-in-law answers the phone, to  
11 your point, you have to make the disclosure right away,  
12 please don't make it that you have to leave a recording  
13 or you have to do a recording to tell what the call is  
14 about because you don't know if you have the consumer on  
15 the phone.

16 You have to make those disclosures to the  
17 consumer that you're trying to reach, not to anybody  
18 that picks up that phone. My five year old daughter  
19 picks up the phone, is the FTC's position that those  
20 disclosures have to be made to my five year old daughter  
21 because that's what it says, and that's what that  
22 comment would appear to lead you to the fact that you  
23 have to make those disclosures to my five year old  
24 daughter when she answers the phone?

25 You have to get the consumer who the call is

1 intended to on the phone I believe before you have to  
2 make those disclosures.

3 MS. HARRINGTON: Art, that's not what the rule  
4 says, just for the record. That's not what the  
5 Telemarketing Sales Rule says. It has said from the  
6 beginning that the caller has to promptly identify  
7 itself and the purpose of the call, not to the consumer  
8 who's being called, but when the call is connected.

9 MR. CONWAY: So that means if my daughter  
10 answers --

11 MS. HARRINGTON: You're getting debt collection  
12 calls and your daughter answers the phone, the caller I  
13 suppose could ask for you, but a lot of calls aren't to  
14 individuals, and the rule doesn't make that  
15 distinction. I'm telling you what the law is.

16 MR. CONWAY: I'll tell you right upfront we're  
17 in violation of the rule because we don't make the  
18 disclosures until -- we ask for the consumer.

19 MS. HARRINGTON: Well, that's a different  
20 discussion. Let's not go there now.

21 MR. CONWAY: That came up because somebody said  
22 about the zero abandonment.

23 MS. HARRINGTON: Right, right.

24 MR. CONWAY: Now we support the DMA 5 percent  
25 because that again is one that, you talk to

1 19 telemarketers, you get one abandoned call. I don't  
2 think that ratio is off the wall. The other thing is  
3 when you take abandoned calls, and you've got that dead  
4 air in here, when you take abandoned calls and you tie  
5 that in to dead air, that's a killer.

6           You've got to get rid of the dead air. Get rid  
7 of answering machine detection, you're going to get rid  
8 of a lot of dead air because that's we believe is the  
9 primary cause of dead air.

10           The second thing is if you don't have -- in this  
11 whole abandonment issue, you don't have an operator  
12 available or a sales representative available when that  
13 consumer picks up that phone, drop that call  
14 immediately. Don't hang on hoping a consumer becomes  
15 available or a sales rep becomes available. Get rid of  
16 the dead air.

17           MS. HARRINGTON: Matt, since I cuffed you about  
18 the ears the last time you talked, I'll let you go next.

19           MR. MATTINGLY: Let me try to respond to Keith's  
20 question. The short answer is, I don't know of any in  
21 depth studies that have been attempted to try to come up  
22 with a cost figure associated with operating at 5  
23 percent or 3 percent.

24           Again in the survey of our membership, we ask  
25 the question, Can you operate efficiently at a 5 percent

1 rate if it were to be imposed as a national standard,  
2 and the answer was, 95 percent of our membership said,  
3 yes, they could operate efficiently at a 5 percent  
4 rate.

5 When you would drop that down to 3 percent, the  
6 number that believe they could operate efficiently takes  
7 a significant drop. It goes down to 60 percent, and we  
8 asked the question whether you could operate efficiently  
9 below that, and the answer essentially was no.

10 Again I preface these figures by noting that  
11 these are provided only by ATA members and again only  
12 those that responded to our questions, and the prevalent  
13 view was, you have taken a significant drop in  
14 efficiency to go to 3 percent, and it's at that 3  
15 percent level that you begin to experience some serious  
16 degradation in productivity and efficiency when you get  
17 down to that level.

18 MS. HARRINGTON-MCBRIDE: Jerry, at the risk of  
19 making you feel picked on again, I'm wondering, your  
20 tent is up, but I have a question for you. The number  
21 that we've been talking about aside from zero is 5  
22 percent, and I think that we have been talking about it  
23 because people have endorsed the DMA figure.

24 Perhaps if you could enlighten us as to how DMA  
25 arrived at that number and if whether you considered

1 numbers higher and lower than that, it would advance the  
2 ball here.

3 MR. CERASALE: Sure, I'll try and do the best I  
4 can on that. Jerry Cerasale, DMA. We talked in our  
5 process to set a guideline, which is what this is. The  
6 guideline has to go up through our processes, through  
7 the board and be endorsed and approved by the board of  
8 directors.

9 We spoke with predictive dialer manufacturers  
10 and telemarketers themselves on what they did and how it  
11 works and whether they can -- what was reasonable, where  
12 was the cost line and so forth of what they could do in  
13 reducing the number of abandoned calls.

14 That's where we came up with the 5 percent  
15 figure at a minimum, but we, of course, added to our  
16 guideline that they should be as close to zero as  
17 possible, and we've talked about it not being possible,  
18 but you should try and reduce abandoned calls, and we  
19 were going to relook at it, and we constantly relook at  
20 the percentage.

21 That's where we came from. We didn't just think  
22 5 percent was a nice round number, although it is a nice  
23 round number, but through that kind of a process, and  
24 we're constantly looking at guidelines all the time, but  
25 this is where we're still at, the 5 percent rate.

1 MS. HARRINGTON-MCBRIDE: Michael?

2 MR. GOODMAN: Jerry, what's been your  
3 enforcement experience with the guideline that DMA has  
4 set?

5 MR. CERASALE: Well, our enforcement experience  
6 comes generally through complaints, and I think one of  
7 the things that we discussed earlier was trying to --  
8 enforcement is more difficult. We have the same problem  
9 that Missouri has, in that if you don't have a Caller  
10 ID, it's difficult to go back and try and find who  
11 abandoned, how many people abandoned and so forth.

12 So we get complaints, generally from other  
13 marketers who believe that a competitor is abandoning  
14 more calls, et cetera, and that kind of thing, but from  
15 the consumer side, where we get most of our complaints  
16 on our do-not-call and other thoughts where they think  
17 something is deceptive and so forth, a lot of those come  
18 from consumers, and we don't get many from consumers on  
19 this because we don't have the Caller ID.

20 MS. HARRINGTON-MCBRIDE: Do you actually require  
21 your members to tell you what their rate is, and if so,  
22 how would they do that? Are there documented reports  
23 that print out these things? Mr. McKinlay may be  
24 able to address that, at least for his company's  
25 technology whether a predictive dialer -- I know

1 contractually there may be evidence, but is there any  
2 other evidence that the machines themselves could  
3 provide or the software?

4 MR. MCKINLAY: The actual reporting of things  
5 like abandoned calls should be fairly straightforward  
6 and it is not. What I would say is the discussion  
7 shouldn't be just about abandoned calls. It should be  
8 about what we call non agent calls.

9 For example, many dead calls are really  
10 abandoned calls by another name. They're simply keeping  
11 the line open because the dialer doesn't want to  
12 abandon the call, so when you talk about the kind of  
13 concerns which dialers cause, you really have to look at  
14 all these kind of calls: Abandoned calls, early  
15 hang-ups and dead air calls.

16 You've got to add them all together. If you add  
17 them together and if you listen to what Art was saying, he  
18 was talking about at least 40 percent, our own view from  
19 studies we've done is that the figure for non agent  
20 calls is much, much higher than that, and if you were to  
21 get a reduction to 5 percent as per the DMA guidelines,  
22 measured in terms of live calls, calls connected to  
23 agents, that would be a reduction in what's taking place  
24 in the marketplace today.

25 In other words, what you're getting is a massive

1 reduction on the nuisance calls or non agent calls to  
2 consumers in their homes, so much so that for many  
3 people there would not be a problem.

4           If you look around the world in other countries,  
5 we don't have the kind of concerns you have in the  
6 States because you don't have these high levels of non  
7 agent calls, and that's what you have to aim for, so 5  
8 percent, while it may sound high, actually seen in that  
9 context is really quite low.

10           The other thing perhaps that is worth mentioning  
11 is once you go down below 3 percent and you put controls  
12 on these other aspects which I've mentioned, you will  
13 find that most dialers would have a major problem  
14 coping.

15           There are ways of dialing below 3 percent. We  
16 actually design predictive dialer software, but I can  
17 tell you, most vendors in the marketplace at the moment  
18 would have a major job. It's not just a simple fix to the  
19 software. It's a complete redesign, so don't force the  
20 rate below 3 percent and put controls on everything  
21 else. Otherwise you'll find severe non compliance in  
22 the vendor community.

23           MS. HARRINGTON-MCBRIDE: Allen?

24           MR. HILE: I have a question for Art and for  
25 you, Michael. How will you deal with state rates being

1 set impossibly low, let's put a quote under that? Will  
2 you have to have a separate dialer for California, or  
3 can you fix it so that the rate for one state will be  
4 different than the rate for the rest the country?

5 MR. CONWAY: We think we can monitor the calling  
6 that we do in California, and we're going to do it by  
7 program, and obviously we get reports where we can  
8 measure the abandonment rate. Where we see that  
9 abandonment rate, if that is creeping toward up towards  
10 the ceiling at 3 percent, we can take that, put it into  
11 a separate group and then call it either in a pace mode  
12 to get it down well below 3 percent, and then we can go  
13 back in the predictive mode.

14 Again, we are now trying to figure out whether  
15 we can do 3 percent and still maintain -- we're not  
16 going to maintain all the efficiencies we do at 5, but  
17 if we can maintain 95 percent of those, then we will go  
18 to 3 percent, and I do agree that the dialer technology,  
19 the algorithm, okay, we design our own. Ours is all  
20 proprietary, so we can control ours.

21 Some of these older systems that are out there,  
22 they're going to have a tough time with the software to  
23 try and maintain the efficiencies when they get down  
24 below that -- they were really designed for a 5 percent  
25 environment. You get down into a 3 percent environment,

1 you're going to have to rewrite the software for those,  
2 and I don't know if those companies are out there to  
3 rewrite the software.

4 I want to make one more point on predictive  
5 dialers, this technology. There is, from our  
6 standpoint, one huge benefit, and it's also for  
7 consumers, we can now track every single call we make,  
8 so when we get a complaint from a consumer, we can go  
9 back, get the calling history on it. We know what time  
10 that call was made. We know how long that call lasted  
11 and most importantly, we absolutely know the sales  
12 rep that made that call.

13 MS. HARRINGTON-MCBRIDE: Art, I can take down  
14 my own tent because you've led right into a question I  
15 have, and I understand there are three of you at the end  
16 of the table, two who have been waiting a long time to  
17 speak, and I am going to get you. Let me put this on  
18 the table, and then we can continue the entire  
19 discussion.

20 Here are some of the benefits that were detailed  
21 in the comments of predictive dialers, and what I would  
22 like to know from everybody at the table is, do these  
23 benefits stay or go at zero abandonment? If we, for a  
24 moment, imagine there's no more prediction capability,  
25 are these things implicit in dialers and would these

1 benefits remain: Automation of restrictions on calling  
2 hours; maintenance of scripting tools to allow specific  
3 state restrictions regarding rebuttals; cost of the  
4 contract; Improved employee efficiency and the quality  
5 of their work experience; allowing for segmenting of  
6 data and phone numbers to better target consumers?

7 Are these features of predictive dialers going  
8 to go away if the abandoned rate is set at 5 percent, 3  
9 percent, 1 percent, zero, or do they remain and what's  
10 gone is prediction? So with that, I will call on  
11 Mallory, who's been waiting very patiently, and then  
12 we'll go to folks from the Choice Coalition.

13 MR. DUNCAN: Unfortunately, Katie, I'm going to  
14 have to rely on others to answer your last series of  
15 questions, but I did want to make a point.

16 MR. HILE: Use your mike.

17 MR. DUNCAN: I did want to make a point, thank  
18 you, Jerry, that is implicit in some of the comments  
19 that have been made so far, and that is good companies  
20 value their reputation. It's evident from the  
21 conversation we've had that one difficulty of abandoned  
22 calls is that consumers don't know who's calling them.

23 While there are other considerations and  
24 problems that we're going to address I think in the next  
25 session, to the extent that there is a potential of a

1 clear indication of the name of the company that's  
2 calling, perhaps the Caller ID or otherwise, the adverse  
3 reputational consequences of being known to have made  
4 abandoned calls will, among that group of companies,  
5 serve as some check on the problem that I think you're  
6 talking about. So I just wanted to lay that explicitly  
7 on the table.

8 MS. HARRINGTON-MCBRIDE: All right. Thank you.  
9 The representative from Consumer Choice Coalition,  
10 either Jonathan or David?

11 MR. MUSSMAN: David Mussman. You asked about  
12 the benefit to consumers, and I'll go through that, and  
13 if you want to go through those other lists, I'll try to  
14 go through this with you as well.

15 I can tell you from our experience as a member  
16 that we're trying to do exactly what Art does, large  
17 service bureau, and I'll give you an example of what the  
18 consumer loses if you lose the efficiencies.

19 If you take a \$25 an hour outbound marketing  
20 campaign and assume you get one sale an hour, so a sale  
21 costs \$25, we do a lot of teleco work as one of our  
22 segments, which could be win backs, which you try to get  
23 somebody to switch to a different long distance  
24 carrier. Those companies make decisions based on how  
25 much it costs to win someone back, whether or not they

1 perform that program with us or not.

2 Assume the consumer has 18 cent a minute long  
3 distance, AT&T may come to us and say, We have this  
4 program, we're going to offer 9 cent a minute to  
5 consumers, and it's \$25. If you use Art's or even half  
6 of Art's of the 40 percent and go to 20 percent  
7 abandonment rate, kind of a quick and dirty way of doing  
8 what Jonathan's spent a lot more time on, you take the  
9 20 percent of the \$25, and you add that on, another \$10,  
10 and now you have a \$35 acquisition cost.

11 Our customers that come to us who are trying to  
12 get consumers say, I can't do it at 35. They just don't  
13 do the program, and then all those people that we would  
14 have taken from 18 cents to 9 cents just don't get that  
15 product. It reduces their choice of products.

16 MS. HARRINGTON-MCBRIDE: I don't mean in any way  
17 for this to sound snide, and I only raise it because  
18 it's a genuine question of mine. Isn't telemarketing  
19 chosen in that instance because it's the most cost  
20 effective method, and if it no longer were the most cost  
21 effective method, wouldn't the second best choice, maybe  
22 direct mail, maybe some other method of communication be  
23 substituted?

24 Is it necessarily the consumer wouldn't get the  
25 information or just that it would be provided in a

1 different way?

2 MR. MUSSMAN: They wouldn't probably be using  
3 outbound telemarketing if they can get the consumer  
4 through the other method. I mean, they still are using  
5 those other methods. You still get --

6 MR. HILE: Telemarketing is the method of last  
7 resort?

8 MR. MUSSMAN: No, I didn't say that. It's  
9 another method. If you look at what teleco is doing,  
10 and we only do one segment of them, but you get --

11 MS. HARRINGTON: Can you actually pull a little  
12 into the mike, I think it's hard for people in the  
13 audience to hear you? I think we're not picking up  
14 everybody, if there's anything that can be done upstairs  
15 about it. Thank you.

16 MR. MUSSMAN: The telemarketer is one segment  
17 they use to acquire consumers, and depending on the  
18 company, they use direct mail, and they use national  
19 television, 800 inbound and a whole variety, but there's  
20 some segments of the population that won't respond to  
21 each and every one of those, and one of those segments  
22 happens to be outbound telemarketing that people respond  
23 to but they won't respond to the other ones.

24 Some will respond to direct mail but  
25 won't respond to telemarketing, so some citizens lose

1 that choice of that product, and they're not going to  
2 get that through the way that they're going to respond.  
3 They don't lose it in the sense that they can't get it  
4 because there are other ways out there that they could  
5 theoretically get it.

6 MS. HARRINGTON-MCBRIDE: But they're not aware  
7 of it.

8 MR. MUSSMAN: Well, they're not aware of it, or  
9 they won't respond to it in that way.

10 MS. HARRINGTON-MCBRIDE: It's like throwing away  
11 an unopened direct mail piece.

12 MR. MUSSMAN: Yeah. So that's one benefit, and  
13 when you have fewer programs, we have fewer agents, and  
14 when we have fewer agents, we pay fewer people who are  
15 out there who also are the consumers.

16 So I think it does -- it's not just the  
17 reduction in cost. It's actually the reduction in  
18 choice or the reduction in that availability to a  
19 certain segment of consumers.

20 If you want me to, I'll go through your list if  
21 you want.

22 MS. HARRINGTON-MCBRIDE: If there's any way you  
23 can give us sort of a highlight on just those items  
24 which would disappear and why, that might be helpful I  
25 think to understand the full nature of the predictive

1 dialer and whether a reduced abandonment rate or any, in  
2 fact, set abandonment rate would still allow it to have  
3 some utility beyond just the prediction method.

4 MR. MUSSMAN: Let me check my notes. Two of  
5 them I picked up. Cost of the product; is that right?  
6 Was that one of them?

7 MS. HARRINGTON-MCBRIDE: Cost of a contact, yes.

8 MR. MUSSMAN: Obviously that's going to go up.  
9 That's just sheer economics. Employee efficiency will  
10 obviously go down. Those two are pretty easy, and what  
11 were the other three?

12 MS. HARRINGTON-MCBRIDE: Maintenance and  
13 scripting tools to allow specific state restrictions  
14 regarding rebuttals.

15 MR. MUSSMAN: That's a cost. That's a  
16 programming. At least at our place, we could figure out  
17 a way to continue to do it.

18 MS. HARRINGTON-MCBRIDE: Calling hour  
19 restrictions I assume would remain.

20 MR. MUSSMAN: Another cost. I think we could  
21 figure out a programming way to do that.

22 MS. HARRINGTON-MCBRIDE: If we could hear now.  
23 John, are you still interested in commenting?

24 MR. MURRAY: Yes, I'm still interested. I think  
25 perhaps the best answer to your question on each of

1 these, and I can answer them, at least my opinion on  
2 them and my experience is could you have predictive  
3 dialers or how many people would still be able to use  
4 them at a zero, assuming we didn't hit a zero, and all  
5 the things that you gain with predictive dialers.

6           There's no doubt in my mind, having been around  
7 long enough that we've done operations with and without  
8 predictive dialers that we do a better job and disrupt  
9 the lives of less consumers with predictive dialers, at  
10 least in our business, because of the reasons that were  
11 enumerated.

12           You can screen out people. You can target  
13 them. As Art said, one of the best things is you can  
14 track down a problem when you have it which is it's  
15 always so frustrating. Now with technology, if you have  
16 a problem with a particular agent, you can track it  
17 down, so there's so many things on the upside.

18           When you start lowering it, I'm sure that  
19 predictive dialers will remain viable and accomplish  
20 those benefits for us which we really do want regardless  
21 of cost, until you get to a certain point, and I would  
22 recommend that we take a look at or that your staff  
23 continues to look at California and see what's happening  
24 out there.

25           Art mentioned it earlier. It's still too early

1 to tell with a definitive answer. I did call a couple  
2 of newspapers numbers in California. I talked to  
3 smaller ones. One was in the shadow of the big  
4 newspapers in the San Francisco Bay area, and he has  
5 lost two contractors that don't want to do business with  
6 him any longer at the current rates.

7 They're looking at roughly a 25 percent, almost  
8 exactly a 25 percent increase to rehire or recontract  
9 another firm because I guess in mere math they can  
10 figure that their cost per order -- that's how the  
11 newspaper industries pay is per order, is going to be  
12 about 25 percent higher, and that's dealing with I  
13 believe it's the 3 percent threshold.

14 I think that they don't have to actually hit  
15 that threshold until July 1, if someone is much more  
16 knowledgeable on California than me, I think that's the  
17 target, than July 1.

18 MR. MCKINLAY: 3 percent.

19 MR. MURRAY: 3 percent, then 1 percent, so I  
20 think they're projected for 3 percent, so there are  
21 numbers out there in California.

22 MS. HARRINGTON-MCBRIDE: Maybe we can wrap this  
23 part of the discussion up, there are still a couple  
24 questions remaining about alternatives that I think  
25 we'll pick up some in Caller ID and a little bit at the

1 end of this, but if I could pick on you again, Michael,  
2 to tell us, my sense anyway is that these predictive  
3 dialers are sort of intricate systems that allow for a  
4 lot of the benefits that people have talked about at the  
5 table today for much closer tracking and segmenting of  
6 data.

7 Are those benefits going to remain regardless of  
8 the setting of abandonment or not?

9 MR. MCKINLAY: I wouldn't like to comment on  
10 those.

11 MS. HARRINGTON-MCBRIDE: I'm sorry, could you  
12 use your microphone.

13 MR. MCKINLAY: I wouldn't like to comment in  
14 detail on those. Those are claims that are being made  
15 by other people at the table. Our main focus is on what  
16 kind of productivity dialers can bring, and certainly if  
17 you set a zero abandonment rate, you're going to lose a  
18 lot of productivity.

19 If you, for example, take 5 percent of live  
20 calls, and provide it that you do things like  
21 controlling data error and so on, then if you go from 5  
22 down to zero, you're going to lose up to in excess of 15  
23 minutes talk time in the hour and perhaps more. That's  
24 a lot of loss of talk time.

25 MS. HARRINGTON-MCBRIDE: You mentioned that

1 there will be real problems going down below 3 percent  
2 because software would have to be reprogrammed. Would a  
3 similar reprogramming be necessary to retain any of the  
4 other benefits? I know that these aren't issues you've  
5 raised, but I know you make these things, and I'm trying  
6 to understand.

7 MR. MCKINLAY: I really can't comment on that as  
8 an issue. Our main business focus is actually  
9 predictive dialer algorithms. We don't worry about the  
10 rest of the software, so that's our specialty.

11 MS. HARRINGTON-MCBRIDE: Art?

12 MR. CONWAY: We've gotten the benefits from the  
13 predictive dialers because people have invested or  
14 companies have invested in predictive dialers to pick up  
15 the efficiency. They didn't go out and spend all that  
16 money to accomplish those objectives. Those were just  
17 side benefits you got from the efficiency you picked up  
18 from predictive dialing.

19 We make a heavy investment in building our own  
20 proprietary predictive dialing, and people make heavy  
21 investments in buying outside predictive dialers. If  
22 the return on that investment is simply those things you  
23 said without the necessarily efficiency benefit they get  
24 out of it, maybe they're not going to go out and spend  
25 the money.

1           So in that sense, yes, the current predictive  
2 dialers that are out there, yeah, you can turn it down  
3 to zero. It's not going to stop a script from coming  
4 up. It's not going to stop calls from being placed or  
5 lose the ability for the time of when calls are placed  
6 or to control that, but is the company going to go out  
7 and invest in a new dialer, predictive dialer?

8           Nobody is going to buy a predictive dialer if  
9 the abandonment rate is zero because why would you by a  
10 predictive dialer if the abandonment rate is zero? Why  
11 would you invest in that? You're not picking up any  
12 efficiencies.

13           MS. HARRINGTON-MCBRIDE: Is there some other way  
14 you would monitor your call center employees to get that  
15 specific benefit? Is there other technology out there  
16 that could do that alone?

17           MR. CONWAY: What happened was you had people  
18 dialing on phones with a bunch of leads in front of  
19 them, and you had a lot less control in that environment  
20 than you do in today's environment. That's where we  
21 were 20, 25 years ago, you give a guy a bunch of leads,  
22 and he will go dial through them.

23           You had no real accountability for that rep  
24 other than you gave him this bunch of leads. You might  
25 not even know all the names in that bunch of leads.

1 MS. HARRINGTON-MCBRIDE: Can you use your  
2 microphone, please?

3 MR. MURRAY: I'm sorry for intruding. I was  
4 just going to stay I would have a lot lower level of  
5 confidence that I was following your intention of  
6 honoring the do-not-call list for instance.

7 MS. HARRINGTON-MCBRIDE: Okay. I think the last  
8 question, and again we're going to postpone some this  
9 discussion to our Caller ID program because I think that  
10 there is a great nexus, as Eileen mentioned, between the  
11 Caller ID issue and predictive dialer issue because one  
12 of the proposed solution is that you allow for a higher  
13 than zero abandonment but you require there to be  
14 disclosure which I think as Mallory points out would  
15 provide for some accountability because people who may  
16 now feel free to set their abandonment rates with  
17 abandon would not do so if they were going to be out to  
18 the consumer as someone who liked to hang-up on them.

19 So that's what we have to get to in Caller ID.  
20 Are there other proposed solutions including this idea  
21 of a recorded announcement? I know Art has weighed in.  
22 Does anyone else have any thoughts on the viability, if  
23 it were to be made legally feasible, of a recorded  
24 announcement? Would that be a palatable solution?

25 Jerry and then Keith.

1           MR. CERASALE: Mine was up for something  
2 different. I think that my having been in Washington  
3 way too long in my life, hoping for a change in the TCPA  
4 to allow a recording, I don't even want to get involved  
5 with that at all, as a matter of fact.

6           First thing, you asked me, Katie, on numbers, we  
7 did some back of the envelope calculations for you, and  
8 we'll keep doing more and try to produce things, but  
9 just so you have it. We understand that there are  
10 between 500,000 and one million actual telemarketing  
11 service reps, and so I'm going to use the one million  
12 number, making 13 calls an hour, and working eight hours  
13 a day, which is also high because there's a lot of  
14 part-time employment here, but we're going to try to go  
15 with the max, the maximum number we had in both.

16           So it comes out to 104 million calls a day, and  
17 that would be to businesses and consumers, and a figure  
18 that we think is 60/40, but I'll use the Private  
19 Citizen's 59/41, so 41 percent of that would be rounded  
20 up 43 million calls a day. Those are not connected  
21 calls. Those are not calls that are answered. Those  
22 would include busy calls and no answers and answering  
23 machines as well as people answering.

24           So we view that as the outside number on the  
25 number that are being called per day.

1 MS. HARRINGTON-MCBRIDE: Thank you. That's  
2 helpful. Keith?

3 MR. ANDERSON: Now I'm going to ask two  
4 questions, first of Jerry. Your 500,000 to a million  
5 telemarketing service reps, those are people doing  
6 outbound calls?

7 MR. CERASALE: Yes. This is only outbound call  
8 numbers, so a million people, and we have 6 million  
9 people working in outbound telemarketing, that would  
10 include supervision and fulfillment and so forth of  
11 responses, yes.

12 MR. ANDERSON: And a question for Art and your  
13 concern earlier about leaving a recording. I mean, my  
14 notion here is if you call and somebody's not available,  
15 you leave a message that said, This is the XYZ company  
16 calling and maybe a phone number. That's all.

17 Do you have a problem with that?

18 MR. CONWAY: If the person is -- the problem I  
19 have is that you have to say that to my five year old  
20 daughter before you ask my five year old daughter, Is  
21 your daddy home. That's the problem I have.

22 MR. ANDERSON: But if all I do is tell you who I  
23 am, I can see that it's a problem if --

24 MR. CONWAY: When you call me and you get my  
25 five year old daughter on the phone and you want to talk

1 to me, you ask my five year old daughter, Is daddy  
2 home. I don't want you making disclosures to her. I  
3 want you simply to say, Is your daddy home. Now, what's  
4 wrong with that?

5 MR. ANDERSON: What's wrong with --

6 MR. CONWAY: Making disclosures to my five year  
7 old daughter? Look, my five year old took a political  
8 call the other day, listened to this political call for  
9 about a minute, hung up the phone, looks up at her  
10 mother and says, Mommy, my brain is all confused.

11 Now, I don't want you --

12 MS. HARRINGTON-MCBRIDE: Would you have done  
13 anything differently with the caller?

14 MR. CONWAY: Pardon?

15 MS. HARRINGTON-MCBRIDE: Would you have done  
16 anything differently with that call?

17 MR. CONWAY: The political call?

18 MS. HARRINGTON-MCBRIDE: Yes.

19 MR. CONWAY: Thank God I didn't get it, my brain  
20 would have been confused too, but the point is, is it  
21 wrong to ask for the individual first that you want to  
22 speak to? If you get that individual on the phone, you  
23 make the disclosures.

24 If you don't get that individual on the phone,  
25 then you can say, Okay, this is a call from XYZ company,

1 here's our phone number and we'll be calling back later  
2 to try to get ahold of you. I don't have a problem with  
3 that scenario.

4 MR. ANDERSON: Okay. I guess the scenario that  
5 I'm thinking of is the predictive dialer problem. You  
6 call. You get the answering machine. Rather than leave  
7 the consumer with no information, you leave a message  
8 that says, You were called by the XYZ corporation, we'll  
9 call back later.

10 MR. CONWAY: That's in effect a sales call, and  
11 I don't know you're allowed to do that. We were talking  
12 about that with the TCPA.

13 MR. ANDERSON: That's right. We don't know  
14 whether --

15 MS. HARRINGTON-MCBRIDE: I've asked everyone to  
16 sort of suspend their disbelief about the current legal  
17 climate in order for us to have this discussion, just to  
18 know if that's a palpable solution.

19 MR. CONWAY: I agree with that, leave it on the  
20 answering machine. Look, we're going to get in this  
21 Caller ID thing later. I think you're nuts if you don't  
22 demand Caller ID delivered with every telemarketing  
23 call.

24 MS. HARRINGTON-MCBRIDE: Actually, in an effort  
25 to do just that and to stay on schedule, I'm going to

1 ask Matt to speak, and then Jerry will get the last  
2 word, and then we'll recess for a break.

3 MR. CERASALE: I'm down.

4 MR. MATTINGLY: Does that mean I get the last  
5 word?

6 MS. HARRINGTON-MCBRIDE: Matt gets the last  
7 word.

8 MR. MATTINGLY: Let me just address Keith's  
9 example and some of your comments as well about the use  
10 of a recording.

11 Given in the context you put it, Keith, the  
12 issue that you're trying to resolve is, the major  
13 objection to the abandoned call is the dead air call  
14 that causes anxiety on the part of some consumers, and  
15 that's a legitimate concern.

16 How do you then remedy that? One of the options  
17 would be the use of a recorded message, not for  
18 solicitation purposes, which would be blatantly in  
19 contradiction of the TCPA, but an identification to say,  
20 as you said, Hi, this is Sports Illustrated calling,  
21 sorry we missed you, we will call back.

22 Now, I'm not sure what else we would want to put  
23 in that in the area of disclosures, but the key  
24 principle there is that you've identified the call so  
25 that this anxiety element is removed.



1 PANEL ON CALLER ID:  
2 JEFF KRAMER, AARP  
3 MATT MATTINGLY ATA  
4 ARTHUR CONWAY, Dial America  
5 JERRY CERASALE, DMA  
6 ELISSA MYERS, ERA  
7 RITA COHEN, MPA  
8 REX BURLISON, NAAG  
9 ANNE SCHEIDER, NAAG  
10 SUSAN GRANT, National Consumers League  
11 MALLORY DUNCAN, National Retail Federation  
12 CHAR PAGAR, PMA  
13 SID UNDERWOOD, SBC  
14  
15  
16  
17  
18  
19  
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21  
22  
23  
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25

1 MS. HARRINGTON: Okay. Let's go. I think we  
2 have some new additions to the table, and I know we have  
3 Sid Underwood from SBC. Sid, would you introduce  
4 yourself and tell us in one sentence what your principal  
5 interest is in the Caller ID issue.

6 MR. UNDERWOOD: Yes, ma'am. My name is Sid  
7 Underwood. I'm the director of product design at SBC  
8 Communications. I've been involved in several Caller ID  
9 deployments and development of new features associated  
10 with Caller ID.

11 I have a fairly good understanding of the  
12 technology surrounding Caller ID, and the main message I  
13 would like to impart today is that the technology is a  
14 very good technology, but there's limitations in the  
15 network itself.

16 Even though a telemarketer may unblock their  
17 Caller ID, there is absolutely no assurance that the  
18 Caller ID information will be delivered to the final  
19 destination because --

20 MS. HARRINGTON: You're running ahead of us just  
21 a little bit. We're going to have that discussion, but  
22 we're interested just in who you are and what brings you  
23 here.

24 I see that we have Elissa Myers back at the  
25 table for the Electronic Retailers, and let me just look

1 around to see, any other new additions during this  
2 segment since the last?

3 Okay. Well, we are going to talk first about  
4 Caller ID technology and the state of that technology  
5 and obviously how that relates to the feasibility of the  
6 proposed requirement or prohibition that the Commission  
7 has suggested be included in the rule.

8 So let's go to the first question about the  
9 current state of Caller ID technology. Is it now  
10 possible for telemarketers to transmit Caller ID  
11 information over trunk or T-1 lines, and is the  
12 prohibition on blocking Caller ID sufficient to protect  
13 consumers?

14 Sid, it sounded to me like you were getting into  
15 that first question, so let's just go to you. What's  
16 the current state of the technology, and what's  
17 possible?

18 MR. UNDERWOOD: There are two methods to deliver  
19 the Caller ID information. One of them is via the SS7  
20 network, and the other is with ISDN PRI. These are the  
21 only types of circuits that will transmit CPN, calling  
22 party number, which is the proper protocol for delivery  
23 of Caller ID.

24 Most PBXs -- excuse me. Let me correct that.  
25 PBXs typically connect to the Internet exchange carrier,

1 or excuse me, to the local exchange carrier via T-1s.  
2 Some of the newer PBXs can connect via ISDN PRI.

3 MS. HARRINGTON: Sid, I need you to ask you, as  
4 much as you possibly can, to speak to me as though I,  
5 which is true, have no idea what all these acronyms and  
6 technical terms are, so when we talk about PBX, what do  
7 you mean? When you talk about T-1? When you talk about  
8 ISDN, what do you mean?

9 MR. UNDERWOOD: PBX is a private branch  
10 exchange. It is a small telephone exchange that  
11 typically businesses use as opposed to centrax service.  
12 I'm sorry, I don't know if I can get any simpler than  
13 that.

14 MS. HARRINGTON: Okay. If I use a private  
15 exchange rather than -- centrax I assume means that the  
16 whole system is connected directly to the LEC.

17 MR. UNDERWOOD: That is correct.

18 MS. HARRINGTON: The local exchange carrier.

19 MR. UNDERWOOD: That is correct. The dial tone  
20 comes from the local exchange carrier for centrax  
21 services.

22 MS. HARRINGTON: Businesses often use PBXs; is  
23 that right?

24 MR. UNDERWOOD: Yes, we do.

25 MS. HARRINGTON: Telemarketing companies and

1 companies that sell things and do telemarketing, do most  
2 of them use PBXs?

3 MR. UNDERWOOD: I believe that is true.

4 MS. HARRINGTON: So what it is that's possible  
5 with the PBX is very important to this issue.

6 MR. UNDERWOOD: It is for the starting portion  
7 of the call. In other words --

8 MS. HARRINGTON: Back up and say the other  
9 things that you just said in more expansive terms. You  
10 started in about something about PBX, here's what's  
11 possible with PBX, SS7.

12 MR. UNDERWOOD: SS7 stands for signaling system  
13 7. I'm going to get technical, but it's an out of band  
14 signaling network, meaning that the data associated with  
15 the call goes out of band. It does not go over the same  
16 circuit that carries the voice of the call. It carries  
17 data information such as calling party number.

18 MS. HARRINGTON: Do most PBX systems use SS7?

19 MR. UNDERWOOD: No PBX systems are connected to  
20 the SS7 network. The SS7 network is used to  
21 interconnect data between local exchange carriers and  
22 interexchange carriers. Not all local exchange  
23 carriers and not all interexchange carriers are  
24 connected to an SS7 network. Most of the larger  
25 companies are, but not all.

1 MS. HARRINGTON: Are?

2 MR. UNDERWOOD: Are.

3 MS. HARRINGTON: When you say most of the larger  
4 companies are, what companies? The companies who do  
5 telemarketing or companies generally?

6 MR. ANDERSON: LECs.

7 MS. HARRINGTON: The LECs.

8 MR. UNDERWOOD: The LECs and the interexchange  
9 carriers such as AT&T, Sprint, MCI WorldCom, all of the  
10 regional operating companies such as Bell South's SBC,  
11 Southwestern Bell, Ameritech, Pacific, Qwest, Verizon,  
12 all are connected to an SS7 network, but a lot of the  
13 independent companies, competitive local exchange  
14 carriers, some of the smaller interexchange carriers  
15 are not connected to the SS7 network.

16 Therefore, if any portion of a call, even if it  
17 originates from a PBX that is transmitting Caller ID --  
18 if any portion of that call goes across any part of the  
19 network that is not connected via SS7, the Caller ID  
20 information is dropped at that point. It's lost. It  
21 can't be delivered to the final destination.

22 MS. HARRINGTON: What does ISDN have to do with  
23 this?

24 MR. UNDERWOOD: ISDN is integrated services  
25 digital network. Its technology was developed about 20

1 years ago. Again it has a D channel, which carries the  
2 out of band signaling such as SS7. It's not exactly  
3 SS7, but it's enough like SS7 that Caller ID information  
4 can be carried over this separate D channel.

5 The separate D channel again carries only data  
6 information. It does not carry the voice portion of the  
7 call.

8 MS. HARRINGTON: If I am a consumer that gets my  
9 local dial tone service from a CLEC that doesn't have  
10 SS7, is it likely that my CLEC has ISDN, and if it does  
11 then will the Caller ID and PBX --

12 MR. UNDERWOOD: That wouldn't have ISDN. If  
13 they don't have SS7, they wouldn't be using ISDN.

14 MS. HARRINGTON: Okay. Go on. So what's the  
15 state of play here?

16 MR. UNDERWOOD: Again back to I think the  
17 original question I've read somewhere, asked if T-1s  
18 could transmit Caller ID information. The short answer  
19 is absolutely, no, because T-1's do not signal in the  
20 proper out of band signaling protocol to carry Caller ID  
21 information.

22 I have to caution that statement in that there is  
23 equipment that telemarketers or anyone who has a PBX  
24 that is not able to connect to the local exchange  
25 carrier via an ISDN PRI, they can purchase equipment

1 that I believe is called an integrated access device, I  
2 A D or IAD, which will take a T-1 circuit, in other  
3 words, you connect via T-1 and then on the other side of  
4 the IAD, you would connect to a PRI.

5 Basically what you're doing is converting the  
6 T-1 to an ISDN PRI circuit, which is capable of carrying  
7 the Caller ID information, and what you would do is take  
8 the IAD device, and you would put in whatever telephone  
9 number you want the IAD device to transmit out as the  
10 Caller ID.

11 MS. HARRINGTON: Art, do you have something to  
12 say on this?

13 MR. CONWAY: We have an office in Jacksonville  
14 that we use AT&T regular T-1s, not ISDN. I don't  
15 believe we bought any special equipment, and we're  
16 transmitting Caller ID.

17 MR. UNDERWOOD: If that's true, I don't know how  
18 you're doing it.

19 MR. CONWAY: You're the technical expert. All  
20 I'm telling you is we're transmitting Caller ID to the  
21 consumers or CPN to the consumers' Caller ID's box.

22 MR. UNDERWOOD: I don't know of anyway to send  
23 CPN over a T-1 circuit.

24 MR. CONWAY: My understanding is that the AT&T  
25 switches were set up so not only were they to handle

1 long distance, but they were also anticipated to provide  
2 local service, and because those switches were upgraded  
3 to-- again.

4 MR. UNDERWOOD: Let me tell you what they're  
5 doing then. They're not taking the CPN in the PBX.  
6 They're associating a telephone number with the T-1  
7 circuit, and the Caller ID information is originating  
8 from the AT&T switch, not from the PBX.

9 MR. CONWAY: That's right. We're getting  
10 straight dial tone from the AT&T switch I guess, and  
11 then we're delivering the number associated with that  
12 T-1, that branch in Jacksonville, and then what we're  
13 doing is when a consumer calls that number back, we  
14 switch that to our customer service center in Athens,  
15 Georgia.

16 This is all in the Bell South region, but we're  
17 able to do all this, and I don't think we put any  
18 special equipment in, and our understanding is, and it's  
19 tough getting it out of AT&T, it's tough getting it out  
20 of any of these carriers, but our belief is that any  
21 office we have that's hooked up where we're using AT&T  
22 long distance, that we can transmit CPN which will show  
23 up on a consumers' Caller ID.

24 MR. UNDERWOOD: We can send CPN for the trunk  
25 group. It's not CPN originating at the PBX. It's one

1 that we set up for the trunk group, and it's typically  
2 the billing telephone number associated with PBX. It's  
3 not the telephone number, the station within the PBX  
4 that is originating the call that we'll display.

5 MR. CONWAY: We're not using PBX anyway.

6 MR. UNDERWOOD: If you're not using PBX, then  
7 there's not an issue with T-1s.

8 MS. HARRINGTON-MCBRIDE: Art, are you paying any  
9 extra for the service to transmit Caller ID.

10 MR. CONWAY: No.

11 MS. HARRINGTON-MCBRIDE: Why do you choose to do  
12 it in the instance that you do?

13 MR. CONWAY: We're doing it to provide -- this  
14 is in our in house program. We believe that CPN should  
15 be transmitted on every telemarketing call that's made.  
16 That's the return address, and if somebody wants to go  
17 through the effort of putting Caller ID in, which a lot  
18 of people have, why shouldn't you leave them a return  
19 address, and the alternative that Matt came up with was  
20 on the answering machine, leaving the name of the phone  
21 company and the number you can call.

22 We believe if you don't transmit CPN, you don't  
23 have accountability for outbound telemarketing, and we  
24 firmly believe there has to be accountability in  
25 outbound telemarketing just as there should be

1     accountability in any other media.

2             MS. HARRINGTON: Well, there really are I think  
3     three reasons why the company's specific Caller ID  
4     doesn't work well, and a big one is because there is no  
5     return address so people don't know who to complain  
6     about. They don't know who's called them, and they  
7     can't keep track of who they've asked to not call them.

8             There's that problem. There's not compliance  
9     with the requirement that the caller identify itself,  
10    and there's the predictive dialer dead air problem time,  
11    and all of those combined, in addition to the fact that  
12    even where consumers do know who's called them and asked  
13    not to call, they can't block calls more broadly.

14            That's kind of a fourth problem, but the first  
15    three are big reasons why the company specific  
16    do-not-call has not worked for consumers.

17            MR. CONWAY: Well, that's one of the reasons  
18    you -- set your abandonment rate at zero, come out with  
19    that, and then tell me how you are going to enforce it  
20    if you don't deliver CPN. You can't enforce it.

21            MS. HARRINGTON: Right. I'm just pointing out  
22    that all of these are related factors, and I certainly  
23    am heartened to hear you say that you think it's very  
24    important, you believe it's very important to leave a  
25    return address when there's an outbound telemarketing

1 call.

2 That's what the rule requires in some manner,  
3 and we agree.

4 MR. CONWAY: I would just put that in the rule.  
5 I would get over this, Don't block it, and I would say,  
6 You have got to deliver it.

7 We know the company -- we know there are  
8 carriers out there that are capable of delivering it  
9 today, and the carriers that can't deliver it, we don't  
10 believe that WorldCom can deliver it today, but you  
11 come out with this rule that says you have to deliver  
12 it, and WorldCom is going to figure out how to deliver  
13 it, if they want to be a provider for outbound  
14 telemarketers.

15 The way you have the rule written today is, if  
16 you want to deliver it, go to AT&T, but if you don't  
17 want it delivered, go to WorldCom because they can't,  
18 so I don't know quite how to describe that situation,  
19 but it doesn't make any sense to me.

20 MR. HILE: The Caller ID that you transmit to  
21 consumers, is it a number that they can actually call  
22 back and get a person?

23 MR. CONWAY: Yes.

24 MR. HILE: It's not the number that's going to  
25 ring busy all the time?

1           MR. CONWAY: No, no. We transmit the number  
2 back, as Sid said, it's that billing, billing party  
3 number. When a consumer calls that billing party number  
4 back, we call forward that down to our service bureau in  
5 Athens. We ask the consumer, the customer, What is your  
6 telephone number, because we're not getting ANI down  
7 there because of the call forwarding. We've been  
8 working on this for awhile. We have to figure out how  
9 to do this.

10           So we have to ask the consumer for their phone  
11 number. The rep keys in the phone number, and a screen  
12 pops up with why we called them because we know the  
13 branch we call them at because we're getting the ANI  
14 from our branch where the call is being forwarded from  
15 down in customer service, so we know the branch we  
16 called them out of. We know their phone number, and now  
17 we can do a screen pop for why we called them and have  
18 an intelligent conversation with the consumer.

19           What I would urge the Commission, and I saw this  
20 I think in the AARP policy, we need time to institute  
21 this because if you want to handle these calls in a  
22 proper fashion, you have to have sort of the back office  
23 environment to do that in. We've rolled it out with our  
24 open proprietary program a part of that. The intention  
25 now is to roll it out with the rest of this program.

1 That's that sponsor program that we do, the magazine  
2 program.

3 Then what we want to do is talk to clients about  
4 rolling it out for clients, but to roll it out for  
5 clients again we have to build the databases to be able  
6 to handle those calls when they come into the customer  
7 service area.

8 Additionally, when that person calls you,  
9 suppose the person calls you and buys. Well, you don't  
10 want to call that person again, so you have to get them  
11 out of the inventory, so we're working on how to get  
12 them out of the inventory or suppress any future calls  
13 to them very quickly, whether it be for if they bought,  
14 if they say, Well, I really don't want to buy or don't  
15 call me again.

16 We need to get that out of the inventory because  
17 that's still sitting in the inventory because not  
18 everybody calls you back.

19 MS. HARRINGTON: I think Karen has a question,  
20 and then we're going to go to Rita and Elissa.

21 MS. LEONARD: This might not be the right time  
22 in the discussion to ask this question, but it sounds  
23 like there's a lot of technical complexity and stuff in  
24 terms of what you're dealing with, not necessarily in  
25 terms of initially transmitting the Caller ID

1 information, but then how you deal with it when it comes  
2 back.

3 I'm just wondering whether both from the  
4 transmission end and then also from the back end, once  
5 you deal with the data coming back, if there's a  
6 difference in experience with the larger telemarketers  
7 like Dial America and the smaller operations out there  
8 that are going to be grappling with this.

9 MS. HARRINGTON: Let's add that question to the  
10 mix, but we're going to hear from some other folks now.  
11 Rita and then Elissa?

12 MS. COHEN: I don't profess to follow exactly  
13 all the technical discussion, but I think it was clear  
14 that it is not uniformly possible today for everyone  
15 using the carrier that they're using to deliver the  
16 Caller ID, and I think that there are a whole lot of  
17 businesses who are making a decision on what carrier  
18 they use for many factors, not just whether in fact they  
19 can deliver the Caller ID.

20 It could be very difficult for industry if  
21 everyone were forced to use one carrier because that  
22 carrier could then use that to their competitive  
23 advantage, so I think choice for the industry is  
24 important to maintain, and I think that ultimately if,  
25 in fact, this is a competitive advantage and it is added

1 by other companies, that prohibiting the blocking of  
2 Caller ID would ultimately yield the same thing, because  
3 as that capability increases, you would not be able to  
4 block it, and more and more you would get the Caller ID.

5 So I think that ultimately you'll get to the  
6 same place, but to force it at this point I think could  
7 have some implications to the industry that could be  
8 difficult.

9 There is one other point I wanted to make which  
10 is it's not clear to me exactly what number they would  
11 get back in certain cases because it sounds like that  
12 this is kind of a bypass of the normal system and that  
13 they're using maybe a billing number. That would  
14 certainly limit the way that you could have the return  
15 call come in.

16 Yet what we found is if they're calling a call  
17 center, they may get a busy signal or it may not be able  
18 to accept it. I know that Dial America has a technique  
19 of diverting that, but I don't know if that's uniformly  
20 available, and so if you force a certain number, that  
21 may not be the best number for the consumer.

22 They may really wish to get a different number  
23 to call back.

24 MS. HARRINGTON: Elissa?

25 MS. MYERS: I just wanted to clarify, one quick

1 point and one question. I wanted to make sure I  
2 understood what Art was describing, and it sounded to me  
3 as if what Art has described by using the billing  
4 number, you've substituted a number for the number which  
5 is emanating from the station of the particular  
6 operator.

7 MR. CONWAY: No.

8 MS. MYERS: If I were your operator on the  
9 phone, I have a number associated with the phone that  
10 I'm at, and it's not the billing number, so it's you but  
11 it's not the number of the call.

12 MR. CONWAY: We're not substituting it. That's  
13 what is being delivered. We're not putting the number  
14 in there. To Sid's point, the number being delivered  
15 over the T-1 is the billing number.

16 Now, what happens with the billing number?  
17 Well, we found out when we first did this is when people  
18 called back, the phone was ringing off the hook in the  
19 branch because that's the billing number, so the call  
20 was going through. We didn't have the systems in place  
21 in the branch to handle it so we ended up forwarding it  
22 down to our customer service area.

23 Another option we're looking at now is to have  
24 the branch be capable of handling it, since they're  
25 trained on whatever the program is, and they have a

1 special set up where the call would come back into the  
2 branch.

3 Now, we would be getting the true ANI from the  
4 consumer, do the screen pop right there in the branch  
5 without having to ask the consumer for the information  
6 and have a person trained on that program be able to  
7 handle that call.

8 The experience we get when we get these calls is  
9 we're not getting requests to delist or to be put on a  
10 do-not-call list. We're just getting people who are  
11 curious, Why were you calling me, particularly when you  
12 get into a no answer situation where they're looking on  
13 their Caller ID box, and you've called them six times,  
14 and you get six NAs, we're going to keep calling, but  
15 they're seeing six calls on their Caller ID box, all  
16 from the same phone number.

17 So they're calling back and saying, Okay,  
18 obviously you're trying to get ahold of me, can you tell  
19 me why you're trying to get ahold of them, and  
20 interestingly we convert a significant amount of those  
21 into sales.

22 MS. MYERS: I guess to make my point, I think we  
23 agree. However, I'm also not very technologically  
24 competent, but however you get there, we support the  
25 notion that it serves the consumer and the marketer to

1 have a number that the consumer can call that's a  
2 rational number to return the incoming call, whether  
3 it's connected or not connected.

4           So I think we support your position, however  
5 you technologically get there. Just because Ms.  
6 Harrington-McBride said we might do it, and I just  
7 wanted to revisit the earlier conversation going from  
8 Chairman Miller's data that was submitted to everybody  
9 yesterday or at least to many people yesterday, it  
10 looked to me from that data that there were 16 billion  
11 annual calls that were attempted.

12           That's close to Jerry's number. I took Jerry's  
13 number and multiplied it times 200 and came up with 8  
14 billion, but maybe it's more than the five days a week,  
15 so let's say 16 billion calls for a minute, assuming  
16 that's correct.

17           If there are 115 million households that are  
18 receiving calls, and I believe that's the number that's  
19 generally accepted in the telemarketing industry, that  
20 works out to about something like 82 calls per year, and  
21 with a 5 percent abandonment rate, that would be  
22 something like four to five calls abandoned per year per  
23 household.

24           I think reasonable people can differ on whether  
25 or not five calls is too many abandoned calls, but I

1 think reasonable people might also feel that because of  
2 the cost savings and the inefficiencies that therefore  
3 suppress the cost of goods to consumers, the five calls  
4 abandoned per year may not be too many, so I just submit  
5 I would be happy to provide this data more perfectly for  
6 the record.

7 MS. HARRINGTON: Thank you, Elissa. Thank you  
8 for at least making a stab. Jeff?

9 MR. KRAMER: Thank you. We believe strongly  
10 that this provision is an important part of FTC's  
11 proposal and critically important to consumers.

12 Again, getting back to Susan's point, we're  
13 talking about balance here. The consumer is the one who  
14 has a telephone. The consumer has a telephone to  
15 communicate with people. Already they're subjected to  
16 the concern over telemarketing fraud. They're having to  
17 purchase additional items to keep telemarketers from  
18 calling them, so they're purchasing a Caller ID which is  
19 really not effective for the purpose a lot of them are  
20 getting it because they're getting numbers or no numbers  
21 at all, so we think it's real important that this  
22 provision be put in place.

23 The other thing is I think it's a real important  
24 link to the do-not-call registry if, in fact, the  
25 registry is adopted because what it will do, it will

1 provide consumers with the opportunity to help the  
2 industry see which of their members aren't following the  
3 abandoned call rate.

4 It will help the FTC and other law enforcement  
5 find out if this person is on the do-not-call list who  
6 is, in fact, calling them in violation of the  
7 do-not-call registry, and it will give the consumer  
8 again the ability to get back in touch with the person.

9 It doesn't have to be the operator. It just has  
10 to be a number so the person can call back and get in  
11 touch with these folks. The reason we did put the  
12 two-year window in there because we've heard over and  
13 over again technology is not available, technology is  
14 not available.

15 Now it's available. Two years is plenty of  
16 time. If FTC wants to make it less than that, that's  
17 fine, but we think two years is the maximum that the  
18 industry needs to comply with this.

19 Finally, we have another concern about if this  
20 is in fact adopted, which is something we're seeing  
21 happening more and more, is while someone calls a home  
22 and doesn't leave a number but leaves a message on the  
23 Caller ID telling them they're getting something free or  
24 call back, and so obviously the consumer calls back, and  
25 then it's an inbound call, and they're marketed for

1 services so we would ask the Commission to look at that  
2 as well.

3 MS. HARRINGTON-MCBRIDE: I will jump in on  
4 that. I have seen that statistic cited, but I think  
5 I've seen it coming from a single source industry.  
6 Anything on that, the use of messaging on Caller ID or  
7 any of the companies in the ATA or DMA doing it, to your  
8 knowledge? Do you sanction it?

9 MR. CERASALE: I don't know of anyone doing it.  
10 We've heard of it. It was brought up that people were  
11 trying to just get answering machines, no one home.  
12 They were hanging up if somebody answered. I think that  
13 creates a problem with TCPAs as you have now.

14 It does violate some state laws that say you not  
15 only cannot block, you cannot alter, which is one of the  
16 things that we were concerned about. We would like to  
17 be able to -- one of the things that Art is showing will  
18 happen is it's showing it's coming from Dial America,  
19 but I may want to, as Jerry Cerasale company, want to  
20 get all those calls back to me.

21 I don't want a customer service call to go back  
22 to them, so we're in favor of not blocking Caller ID.  
23 We don't know the technology, whether it can all be  
24 switched. I mean, you have a highly regulated industry  
25 with highly regulated depreciation requirements from the

1 FCC.

2 I just don't know all the ins and outs of trying  
3 to force new technology on the telecos, and you have to  
4 be very careful, if one company because they were trying  
5 to get ready to do local phone calls and others weren't,  
6 that they suddenly get a huge advantage. I mean,  
7 there's huge issues there for antitrust and monopolies  
8 and so forth that I can't even try to give any smart or  
9 intelligent answer, if I ever give an intelligent answer  
10 to anything anyway.

11 So we would like no blocking. We would like the  
12 ability, although it may not be able to be done, but the  
13 ability to put on a number that won't be busy, a number  
14 that could be the customer service number of the company  
15 for whom the call is being made, the actual marketer,  
16 and to put the name of the marketer rather than  
17 potentially Dial America on there, just using an  
18 example. Those are things we would like to be able to  
19 do, not to have that prevented.

20 The other thing that is an issue that you don't  
21 have in here that I just wanted to raise is that we have  
22 found, and there is a state decision with a marketer who  
23 was able to show Caller ID, called a few times, no one  
24 was home, and had a list of this telemarketer called.

25 It was a service bureau. It was not a marketer

1     itself. I don't know if it was all the calls were being  
2     made on behalf of the same client, and the state found  
3     that that was a pattern of abuse because you were trying  
4     to harass them, so we have to watch out in the case of  
5     leaving things on a Caller ID where someone is not home  
6     that that's not viewed as harassment from the point of  
7     view of creating another problem for marketers in trying  
8     to reach individuals and say, Here I am, here's who  
9     called.

10           MS. HARRINGTON-MCBRIDE: Our time is fairly  
11     short on this, and we do need to move along to deceptive  
12     practices, but Susan and Char, we will hear from you,  
13     and then we will move on to the next session.

14           MS. GRANT: Susan Grant, National Consumers  
15     League. Now that we know that it's technically  
16     feasible, it isn't enough for the Commission to simply  
17     prohibit the blocking of Caller ID. There should be a  
18     requirement to provide it, and there should be enough  
19     lead time to allow companies to do that.

20           There could be for long some companies it will take  
21     longer so case by case permission granted by the  
22     Commission to comply at a later date, but this is what  
23     is really needed in order to give companies the  
24     incentive to provide the technology to telemarketers and  
25     telemarketers the incentive to purchase it.

1 MS. HARRINGTON-MCBRIDE: It sounds to me as  
2 though we've already seen in the two years since we last  
3 considered this issue some progression in the technology  
4 because now what we're seeing is that Art tells us he's  
5 quite able to do this, and although we know he's a very  
6 large call center provider, we certainly have seen a  
7 progression so I think that that's helpful. Char?

8 MS. PAGAR: Yes, Char Pagar from the PMA. I'm  
9 actually going to agree with Susan Grant here. We  
10 certainly do support the idea that telemarketers should  
11 not block Caller ID capability if they have that, but I  
12 would encourage the Commission not to impose a Caller ID  
13 requirement on telemarketers at this time and not to do  
14 so in a manner that is going to impose this requirement  
15 in two years or three years or whatever it is because  
16 frankly it's very difficult to predict technology and  
17 technological developments.

18 We had that situation with the COPPA Rule. We  
19 had expected at some point that parental verification  
20 methodologies would develop, and certainly things in  
21 that area have happened much more slowly than we would  
22 have expected.

23 MS. HARRINGTON-MCBRIDE: It's my vague  
24 recollection, I don't have the statistics right with me,  
25 but perhaps someone at the table can help me out on

1 this, don't some states require transmission of Caller  
2 ID, and if so, if I'm remembering correctly, how is him  
3 compliance happening in those states?

4 MR. HILE: Some states do require it.

5 MS. PAGAR: My understanding, and I haven't done  
6 a recent review on this issue, but my understanding is  
7 that there are a number of states that prohibit  
8 blocking. I'm not aware of any states that require  
9 transmission.

10 MR. HILE: Matt?

11 MR. MATTINGLY: I'm aware of no state that  
12 requires affirmatively the transmission of Caller ID.  
13 Like Char says, there are a number of states that have  
14 legislation that prohibits the intentional interference  
15 with the Caller ID signal.

16 MS. HARRINGTON-MCBRIDE: Yes, Sid?

17 MR. UNDERWOOD: I just wanted to make the point  
18 that any requirement that you have that Caller ID be  
19 transmitted is probably not going to create a burden for  
20 large local exchange carriers or large interexchange  
21 carriers. The burden will be on the small competitive  
22 local exchange carriers and the small interexchange  
23 carriers.

24 If the FCC is trying to stimulate competition in  
25 those areas, any regulation that would require them to

1 carry Caller ID information may cause a hindrance to the  
2 competition, not to the big companies.

3 MS. HARRINGTON-MCBRIDE: I think we're going to  
4 give about three minutes discussion on this. We  
5 actually do have some important issues to talk about  
6 with our miscellaneous deceptive practices, but before  
7 we do our last three minutes, please feel free to  
8 supplement the record on this issue.

9 Obviously this is an evolving area. Some of you  
10 may not have been aware of Dial America's capabilities.  
11 We would like to hear responses to the practicality of  
12 transmission, and the potential issues which conflict  
13 with other regulations at the federal level. Matt?

14 MR. MATTINGLY: There have been a couple  
15 statements made here where technology and capability did  
16 not exist before, it exists now. I'm not ready to sign  
17 up to that on a blanket statement nationwide.

18 The existence of technology and capability is  
19 not the same as availability, and Art has given some  
20 very positive experience in his situation. I suspect if  
21 we query marketers across the country, we'll get  
22 different views and experiences.

23 As Char has mentioned here, I would be very,  
24 very reluctant to see the government impose a standard  
25 and a requirement that we don't know for sure is capable

1 of being met yet, and I don't think there is anyone at  
2 this table who's qualified to make that judgment.

3 I would note that HR 90 has passed the House and  
4 is pending in the Senate that addresses this issue, and  
5 one of the key provisions of that legislation calls for  
6 a study by the FCC of the technology issues involved  
7 here.

8 ATA supports that legislation and the purpose of  
9 that study, and we would certainly like to see that  
10 before we come to any judgment or decisions on these  
11 issues.

12 MS. HARRINGTON-MCBRIDE: All right. Why don't  
13 we take a one-minute stretch, and we will ask the  
14 participants for the next panel, proposed changes to  
15 various deceptive practices, to come to the table.

16 (Break in the proceedings.)

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1 PANEL ON DECEPTIVE PRACTICES:  
2 JEFF KRAMER, AARP  
3 NOREEN KAMINISKI, Dial America  
4 JOHN RUSCH, DOJ  
5 JERRY CERASALE, DMA  
6 RITA COHEN, MPA  
7 REX BURLISON, NAAG  
8 ANNE SCHNEIDER, NAAG  
9 SUSAN GRANT, National Consumers League  
10 MALLORY DUNCAN, National Retail Federation  
11 LINDA GOLDSTEIN, PMA  
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1 MS. HARRINGTON-MCBRIDE: We have some new  
2 participants at the table. John, could you introduce  
3 yourself, please?

4 MR. RUSCH: Good morning. I'm John Rusch. I'm  
5 with the fraud section of the criminal division of the  
6 U.S. Department of Justice.

7 MS. HARRINGTON-MCBRIDE: Thank you. I see we've  
8 been joined by a new Dial America representative.

9 MS. KAMINISKI: That is correct, Noreen  
10 Kaminiski, Dial America.

11 MS. HARRINGTON-MCBRIDE: Terrific. We've had a  
12 substitution for ATA.

13 MR. PROCHNOW: Tyler Prochnow, America  
14 Teleservices Association.

15 MS. HARRINGTON-MCBRIDE: And I see we're joined  
16 by Linda Goldstein representing?

17 MS. GOLDSTEIN: PMA.

18 MS. HARRINGTON-MCBRIDE: Terrific. Everybody  
19 please remember to speak directly into the mike. If it  
20 doesn't sound too loud to you when you're speaking,  
21 you're not speaking into the mike.

22 MR. HILE: I think the reporter missed the last  
23 one.

24 MS. HARRINGTON-MCBRIDE: Stratis, could you go  
25 again.

1           MR. PRIDGEON: Stratis Pridgeon with American  
2 Resort Development Corporation.

3           MS. HARRINGTON-MCBRIDE: I think there's a yoga  
4 I technique we could all learn about monitoring our  
5 breathing, but still actually managing to pass air over  
6 our vocal cords. We'll do that before the next  
7 session.

8           Okay. We would like to talk now about some  
9 changes that we have made to the miscellaneous deceptive  
10 practices as we call them in the rule, and to begin  
11 with, we'll talk about the credit card loss protection  
12 changes that we have suggested. We've entered some new  
13 disclosures and prohibited some misrepresentations in  
14 regard to the sale of credit card loss protection.

15           We want to know, are these meaningful and  
16 appropriate changes, what comment on that? John?

17           MR. RUSCH: I can say just briefly the criminal  
18 division's comments on the proposal indicated basically,  
19 we thought they were entirely appropriate given the  
20 range and variety of things that we see with abusive and  
21 fraudulent practices in the area of telemarketing, so  
22 not to belabor the issue, I think they are important and  
23 necessary additions.

24           MS. HARRINGTON-MCBRIDE: Susan?

25           MS. GRANT: I agree. This is a great area of

1 abuse and is very similar to credit repair both in the  
2 tactics that are used and the resulting charges to  
3 consumers, so treating it in the same way as credit  
4 repair I think would be very logical.

5 MS. HARRINGTON-MCBRIDE: Anybody from industry  
6 have any objection to the proposed provisions? Well,  
7 this was a nice break in the day then, wasn't it?

8 Okay. Let's move on then to our prize promotion  
9 disclosure, the addition of the language from the  
10 Deceptive Mail Prevention Act. Linda?

11 MS. GOLDSTEIN: Thank you. We just wanted to  
12 state for the record that I think it's important to  
13 recognize that these disclosures were developed in the  
14 context of a very specific inquiry that was focused on  
15 sweepstakes and a particular medium, and that was  
16 direct mail.

17 These disclosures really evolved because the  
18 record reportedly indicated in that case that certain  
19 types of direct mail solicitations and representations  
20 that seemed to be particularly unique to direct mail  
21 because direct mail lent itself to those kinds of  
22 representations may have caused some consumers to  
23 require some disclosure beyond the fact that no purchase  
24 was necessary, and the disclosure was added to alleviate  
25 any potential impression on the part of the consumers

1 that a purchase might also increase their chances of  
2 winning.

3 We are somewhat concerned that those disclosures  
4 that seemed appropriate in the context of that  
5 Congressional inquiry and the Deceptive Mail Prevention  
6 Act that was ultimately passed not be viewed as the new  
7 minimum level of disclosure that should be required for  
8 all sweepstakes.

9 We think it's important to recognize that  
10 sweepstakes are a legitimate marketing technique and  
11 that there are many types of sweepstakes that do not  
12 contain the kinds of representations that seem to be  
13 more predominant in direct mail.

14 You note from our comments that PMA has not,  
15 notwithstanding that, objected to including this  
16 disclosure as a disclosure in telephone solicitations,  
17 but we are concerned about setting a precedent that  
18 might ultimately lead to a viewpoint that this  
19 disclosure should be or is necessary every time a  
20 sweepstakes is presented regardless of the  
21 representations that are being made or regardless of the  
22 medium through which it's being represented, but as a  
23 gesture of our good faith, we're not going to object to  
24 the addition of the disclosure.

25 The one issue we have is with the timing of the

1 disclosure. We would ask the Commission to consider  
2 allowing that disclosure to be made some time during the  
3 course of the call rather than requiring that it be one  
4 of the prompt disclosures that has to be made.

5           The reason we feel that is that oftentimes in a  
6 telemarketing call that includes a sweepstakes, the  
7 sweepstakes offer will actually often be presented  
8 before any sales solicitation is made, and that's  
9 actually done precisely to make sure that consumers  
10 don't link the two.

11           It's often done so that the sweepstakes portion  
12 occurs first. The consumer is entered in the sweepstakes,  
13 and then the operator goes on to the sales solicitation,  
14 and we are concerned that in that context, a statement  
15 that a purchase does not improve your chances of winning  
16 seems illogical to the consumer at that time because we  
17 may not have even talked to them yet about a product or  
18 a service.

19           So what we're proposing is that the disclosure  
20 be added, that it not be required promptly and that the  
21 marketer have the flexibility to determine when, during  
22 the course of the call, that disclosure seems most  
23 appropriate, given the context of the script.

24           MS. HARRINGTON-MCBRIDE: We'll swing down to the  
25 end of the table for Stratis. I know ARDA addressed

1 this in their comment.

2 MR. PRIDGEON: I didn't get a chance to remove my  
3 placard quick enough. If I had thought about it ahead  
4 of time, I would have had Linda appear for me as well.

5 I don't think I can disagree with anything she  
6 said. I think one of our main concerns, number 1, we  
7 don't have any objection to the inclusion of a  
8 disclosure. It is already required under the  
9 sweepstakes provisions of the law, and I understand the  
10 context that that was created in.

11 So that was a very good point, and again the  
12 timing, not all calls will have that type of promotion  
13 in it, so I think it's very important not to require  
14 that as the first thing that comes out of the  
15 telemarketer's mouth.

16 The other disclosures are certainly more  
17 important as far as name and who you're calling from,  
18 and what product you're selling, but again we would not  
19 object to having that disclosure in there, but only  
20 within the context of the prize promotion and the proper  
21 time to call.

22 MS. HARRINGTON-MCBRIDE: Susan?

23 MS. GRANT: Susan Grant, National Consumers  
24 League. Well, name and how who you're calling from  
25 should always be the first thing that you say, but then

1 often the next thing is about the fact that you've won  
2 or that you're eligible to win something.

3 I think it's precisely because that precedes the  
4 sales pitch that the information that no purchase is  
5 necessary and that your chances will not be improved by  
6 making a purchase should follow that in quick  
7 succession, and then you can say, But we have a great  
8 offer to make to you, and there's a logical progression  
9 there, rather than that key information being lost at  
10 the end when the consumer may have already made a mental  
11 commitment to thinking that they need to buy something  
12 in order to win the price.

13 MS. GOLDSTEIN: May I ask a question in response  
14 to that?

15 MS. HARRINGTON-MCBRIDE: Yes.

16 MS. GOLDSTEIN: Susan just put a thought into my  
17 head about a possible idea or a compromise. One of the  
18 things that did trouble me about adding this disclosure  
19 to all prize promotion telemarketing calls is that it's  
20 not related in any way to the context of what's being  
21 said, and if your concern would be those calls that  
22 begin with a representation that you've won or you may  
23 have already won, maybe the solution is to have it be a  
24 triggered disclosure so that the disclosure wouldn't be  
25 required at all unless those representations that you

1 feel create the need for that disclosure are in fact  
2 made during a telephone call.

3 MS. HARRINGTON-MCBRIDE: Okay. Jeff?

4 MR. KRAMER: Okay. We support the Commission's  
5 expanded disclosure. Linda brings up the fact that  
6 during the sweepstakes, direct mail was unique. We  
7 think it's even more important over the phone because at  
8 least in direct mail, you can refer back to the piece of  
9 paper and perhaps then see the disclosures again. On  
10 the phone, that's probably the only contact you're going  
11 to have with that person.

12 It's real important, especially for older  
13 consumers, to understand upfront that they don't have to  
14 purchase anything, and that purchasing will not increase  
15 their chances of winning, so we do support the  
16 expansion.

17 MS. HARRINGTON-MCBRIDE: Keith?

18 MR. ANDERSON: Question for Linda: How do  
19 people comply with the current requirement, which I know  
20 the rules in front of me, but my recollection is that  
21 you're required to promptly say, No purchase necessary  
22 to win? Don't you have the same problem there?

23 MS. GOLDSTEIN: They do comply, and the industry  
24 is complying by making that disclosure promptly, but to  
25 be honest, in the context of prize promotions, that's

1 almost a generic disclosure that consumers expect to  
2 hear with every sweepstakes ad they see.

3 If you look at ads on television or on radio,  
4 many of which again don't even offer the opportunity to  
5 purchase, they may simply be inviting you to go to your  
6 store, visit your BMW dealer to enter the sweepstakes.  
7 It's a standard disclosure.

8 Now what we're talking about is adding another  
9 disclosure that's focused on a purchase, and what we're  
10 suggesting is there may be a disconnect in the  
11 consumers' mind to go on about that when you haven't  
12 even told them yet what the product or service is that's  
13 being offered for sale.

14 MR. ANDERSON: But to say no purchase necessary  
15 is to talk about a purchase. I guess I envisioned it as  
16 sort of being it's a second sentence.

17 MS. GOLDSTEIN: I'm agreeing with you, but what  
18 I'm suggesting to you is that that's almost a standard  
19 disclosure that consumers are used to seeing in any  
20 sweepstakes, irrespective of whether they're being asked  
21 at that moment to purchase a product or service.

22 For example, it's a network requirement for  
23 broadcast advertising sweepstakes, even if no product or  
24 service is being offered, in other words, even if it's  
25 not a direct response ad, but it's a teaser ad or an ad

1 directing you to some other location to enter a  
2 sweepstakes. It's a standard disclosure that consumers  
3 are used to seeing.

4 Adding the additional statement that a purchase  
5 does not improve your chance of winning I think starts  
6 to take the communication to a slightly higher level,  
7 and it's putting the consumer more into the mind set of  
8 a product purchase when we haven't even talked to them  
9 about that product yet.

10 This is not about trying to hide this  
11 disclosure. It's really about making the disclosure  
12 where we think it's most relevant and most logically  
13 fits within the script, and we're just concerned that  
14 there may actually be a disconnect.

15 In fact, in some cases it may be less meaningful  
16 to the consumer to say it at that point when we haven't  
17 even offered the product or service to them yet to  
18 purchase.

19 MS. HARRINGTON-MCBRIDE: Okay. Linda, I think  
20 we've got that. Since we have such a short session, I  
21 want to switch over and hear what the states have to  
22 stay. Anne?

23 MS. SCHNEIDER: Anne Schneider on behalf of  
24 National Association of Attorneys General. We do agree  
25 with the FTC's proposal on this. The timing of this

1 type of disclosure is important to occur when the prize  
2 is discussed as the rule requires.

3           Rather than reiterate, I'll just ditto the  
4 comments of AARP and NCL. We also suggested in our  
5 comments that we look at the odds disclosure because the  
6 suggestion that odds are based on the number of entries  
7 is absolutely meaningless for consumers.

8           There's no context for them to evaluate the  
9 specialness of this offer, and we've suggested the  
10 Commission take a look at that and require some sort of  
11 numerical odds, even if based on estimates.

12           MS. HARRINGTON-MCBRIDE: Okay. John?

13           MR. RUSCH: Yes. John Rusch from the Justice  
14 Department. I want to second Anne's comments on that  
15 point as I think our comments had already indicated.  
16 What we have seen in fact in fraudulent telemarketing  
17 operations is that fraudulent operators will try to  
18 twist words so they have some facially logical kind of  
19 comment like, when they have these give-me gifts that  
20 are provided in these types of operations.

21           If a consumer is at least wary enough to say,  
22 Well, what are my odds of getting this fabulous prize,  
23 and they say, We have all these prizes so you're one in  
24 one, you're guaranteed to win something. The problem is  
25 when it's the give-me gift approach, if they give the

1 valuable gift to anybody, it's certainly not going to be  
2 that consumer, and the consumer in fact ends up getting  
3 the virtually worthless gift.

4 So I think our point like NAAG's is some  
5 clarification to make it very clear what the approximate  
6 numerical odds are of winning that particular prize or  
7 any other prizes that are being presented in the  
8 competition would seem an appropriate step.

9 MS. HARRINGTON-MCBRIDE: Linda?

10 MS. GOLDSTEIN: I just wanted to respond to the  
11 odds issue. We went through this in great length and at  
12 great detail, and there was a lot of testimony in this  
13 in the original rulemaking, and the current rule already  
14 requires that if the odds can be calculated in advance,  
15 they be disclosed.

16 So in situations where there are fixed odds, for  
17 example, if it's a pre selected numbers sweepstakes or  
18 some sort of a probability game where the odds are fixed  
19 in advance, the rule would already require that those  
20 odds be disclosed.

21 The additional proviso that if the odds are not  
22 calculable in advance you indicate how they would be  
23 determined, was designed to address gains like a random  
24 draw sweepstakes where it's impossible to calculate in  
25 advance what the odds will be because you really have no

1 way of knowing how many people will enter that  
2 sweepstakes.

3 As we explained to the Commission back in 1995,  
4 we felt that for those kinds of sweepstakes to attempt  
5 to give the consumer a fixed set of odds when there was  
6 no neat way to determine it might actually be more  
7 misleading and deceptive to consumers than to indicate  
8 to them simply how those odds would be calculated.

9 MS. HARRINGTON-MCBRIDE: Anne, would you like  
10 the last word on this? I think it's about time for us  
11 to wrap up. We have a slightly early lunch hour, but  
12 everyone is going to need to gain sustenance for our  
13 afternoon.

14 MS. SCHNEIDER: I'm ready for lunch.

15 MS. HARRINGTON-MCBRIDE: We will adjourn here at  
16 12:45 to talk about preacquired account information. I  
17 meant the other one, assemble here.

18 (Whereupon, a lunch recess was taken at 12:00  
19 p.m.)

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1 MS. HARRINGTON: Okay. Let's begin the  
2 afternoon session. Thank you, everyone, for being back  
3 from lunch on time. We have a number of new  
4 participants so I think what we're going to do is ask  
5 everyone once again to identify him or herself, the  
6 organization that you're here on behalf of.

7 Please say in one sentence, no more, what it is  
8 in the preacquired account information subject area that  
9 is of significant concern to your organization. Let's  
10 see. Who should we begin with? Mallory, you're down  
11 there. You're always a good start. Could you begin for  
12 us?

13 MR. DUNCAN: Sure. Mallory Duncan, National  
14 Retail Federation. We represent a broad cross-section  
15 of the nation's retailers. In preacquired account  
16 information, our concern is that the Commission's rules  
17 not accidentally undercut the Gramm Leach Bliley  
18 provisions that were recently adopted.

19 MS. HARRINGTON: Thanks. We'll go around this  
20 way. Speak into your mike, please.

21 MR. THOMAS: My name is George Thomas. Usually  
22 I don't have a problem being heard, but I'll speak up.

23 My name is George Thomas. I'm with the Consumer  
24 Choice Coalition, and in a sentence, our concern is that  
25 we believe that per se prohibition on the transfer of

1 account information, especially when specifically  
2 authorized by a consumer, will at the expense of  
3 consumer choice provide illusory consumer protection  
4 benefits at the expense of both consumers and legitimate  
5 businesses, and that such prohibition is in excess of  
6 the Commission's authority granted by Congress.

7 MS. HARRINGTON: Thank you. Char?

8 MS. PAGAR: Char Pagar on behalf of the Promotion  
9 Marketing Association, and our key concern with the  
10 Commission's proposed approach to preacquired account  
11 information is that it is perhaps far more broad than it  
12 needs to be in order to achieve the intended purpose.

13 We think that more narrow requirements like  
14 disclosure requirements can address the Commission's  
15 concerns in a more reasonable manner.

16 MS. HARRINGTON: Thank you. Those were two very  
17 well constructed sentences so, Laura, let's hear you in  
18 one.

19 MS. POLACHECK: Laura Polacheck, AARP. We  
20 strongly support the Commission's view that this  
21 information should not be used without the consumers'  
22 consent. Otherwise it would be a misuse of private information.

23 MS. HARRINGTON: Thank you. Tyler?

24 MR. PROCHNOW: the American Teleservices Association.  
25 We're concerned that the legitimate use, legitimate

1 business practice using preacquired account information  
2 remains legal.

3 MS. GRANT: Susan Grant, National Consumers  
4 League. We think that this is the most important issue  
5 in the rulemaking proceeding and that the FTC has  
6 largely gotten it right.

7 MR. CONWAY: Art Conway, Dial America  
8 Marketing. From a telemarketing standpoint we would  
9 rather use preacquired account information than have our  
10 sales representatives solicit the credit card number  
11 from the consumer over the phone and therefore have  
12 access to it.

13 MR. COX: Prentiss Cox, Minnesota Attorney  
14 Generals Office. Our position is that there's no  
15 possibility of a rule short of something like the  
16 Commission did in a situation where the locus of  
17 control is switched from the consumer to the seller.

18 MR. BERG: Elliott Berg from the Vermont  
19 Attorneys General. I'm here on behalf of the National  
20 Association of Attorneys General, and I would echo Susan  
21 Grant's comment that this is probably the most important  
22 piece of the FTC TSR revisions, and we have a couple of  
23 proposed changes to suggest to the Commission, but  
24 otherwise we commend you.

25 MS. COHEN: Rita Cohen with the Magazine

1 Publishers of America, and we believe that the sharing  
2 of information under appropriate circumstances is  
3 beneficial to both business and the consumer with  
4 express verifiable consent.

5 MS. GOLDSTEIN: Linda Goldstein speaking on  
6 behalf of the Electronic Retailing Association. If  
7 you'll indulge me for two sentences, I would like to  
8 say, I'm happy to say I finally have found a point of  
9 agreement with Susan Grant and Elliott Berg that we too  
10 think this is the most important issue for our members  
11 in this rulemaking proceeding.

12 Our concern is both with the lack of a clear  
13 definition of preacquired account information itself and  
14 the fact that the proposed ban would prohibit the  
15 transfer and use of account billing information even  
16 with notice to and consent from the consumer.

17 MR. KIRKPATRICK: Roger KirkPatrick, I'm with  
18 Time, Inc., and since Linda just agreed with Susan and  
19 Elliott, I'll agree with Prentiss in his position that  
20 the locus of control should remain with the consumer.

21 Our concern is we want to be able to preserve  
22 the ability to transfer billing information after notice  
23 to the consumer that the information will be  
24 transferred, who it will be transferred to and in  
25 obtaining their permission for that transfer.

1           MR. WALLACE: George Wallace, American Financial  
2 Services Association, an association representing  
3 consumer credit grantors in the United States. We're  
4 concerned that the basic compromise as worked out in the  
5 structuring of Gramm Leach Bliley and the underlying  
6 negotiations be preserved as well.

7           We therefore oppose the FTC's present position  
8 and believe that it can be moderated in a way that  
9 protects consumers and facilitates ongoing marketing  
10 efforts that are legitimate.

11           MS. LEONARD: I'm still Karen Leonard. I'm  
12 still with the FTC, and I'm still listening with  
13 anticipation.

14           MR. DOLAN: I'm Reilly Dolan, I'm also with the  
15 Federal Trade Commission, and I have been looking at  
16 various abuses of preacquired telemarketing information.

17           MS. HARRINGTON: Eileen Harrington with the  
18 Federal Trade Commission.

19           MS. HARRINGTON-MCBRIDE: Katie  
20 Harrington-McBride with the Federal Trade Commission.

21           MR. HILE: Allen Hile, Federal Trade  
22 Commission.

23           MR. GOODMAN: Michael Goodman, Federal Trade  
24 Commission.

25           MS. DANIELSON: Carole Danielson, Federal Trade

1 Commission.

2 MR. ANDERSON: Keith Anderson Federal Trade  
3 Commission.

4 MS. HARRINGTON: And Jerry, I see you've joined  
5 us.

6 MR. CERASALE: I thought I could sneak in.  
7 Jerry Cerasale of DMA, and I agree with the comments of  
8 Roger KirkPatrick.

9 MS. HARRINGTON: All right. The concern in  
10 proposing this prohibition is with unauthorized charges  
11 to consumers' billing accounts, so let's just begin with  
12 the threshold question about whether the prohibition on  
13 receiving or disclosing billing information is  
14 sufficient to protect consumers from unauthorized  
15 charges in connection with telemarketing?

16 Is it overly protective? Is it under  
17 protective. George?

18 MR. THOMAS: Thank you.

19 JUDGE: Speak into your microphone, please.

20 MR. THOMAS: Sorry. In order to answer the  
21 question as to whether it's efficient, overly  
22 protective, I think you have to start with examining the  
23 question on the agenda. First, what is preacquired  
24 account marketing?

25 There is no definition in the proposed

1 rulemaking. There are at least three types of it,  
2 third-party, inbound and seller retained. There's no  
3 description as to what the intent is from the FTC with  
4 respect to that, so hopefully we'll hear today about  
5 what the intent is about the scope.

6 Assuming that it is its broadest, we move to the  
7 next question which is what does billing information  
8 mean. I know that's been somewhat more described, and  
9 that's a separate question, so I won't get into that  
10 area, and the third one is, Is it adequate to protect  
11 consumers.

12 Assuming that these two other questions are  
13 answered in the broadest form, which is a broad  
14 definition of preacquired account and a broad definition  
15 of billing information, there are three problems, there  
16 are three areas where the rules are not adequate to  
17 protect consumers.

18 The first is that the proposed prohibition is  
19 more likely to harm consumers than to help them. To use  
20 an outbound telemarketing example, to call consumers and  
21 request that they give them and request that they give a  
22 credit card over the phone is to turn decades of  
23 consumer protection mantra on its head.

24 The FTC's own web site says that a consumer --  
25 has instructed consumers not to turn over credit card

1 numbers to people or entities that they're not familiar  
2 with, which is always the case or generally the case  
3 with outbound telemarketing.

4           For example, the first problem will be the  
5 consumer will have to get the credit card number, so  
6 when an outbound telephone call is received perhaps  
7 during the dinner hour, the consumer wants to purchase  
8 something, they're going to have to find it. Find the  
9 credit card. There's going to be delay while that that  
10 occurs. There's a likelihood the consumer will give the  
11 wrong credit card as well.

12           Secondly, that information will now be shared in  
13 the context of preacquired account telemarketing  
14 information with a telemarketing representative  
15 the human being on the phone, with the  
16 telemarketer company that hires the telemarketing  
17 individual, and third with the marketer.

18           Today none of those entities ever receive that  
19 information, ever, and that's pursuant to Gramm  
20 Leach Bliley with respect to outbound telemarketing for  
21 financial institutions.

22           Second, the cost to consumers will dramatically  
23 increase that's the second area of harm. As Chairman  
24 Miller's report indicates, for the Consumer Choice  
25 Coalition, the increase in time, this is assuming the

1 consumer has the credit card available when the phone  
2 call is made, 60 to 90 second additional time period.

3 What that translates to using, the medium there,  
4 is 1.5 billion in added cost of marketing as referred to  
5 Chairman Miller's report, page 17. This cost will be  
6 passed on to consumers, so they will be harmed by the  
7 increased cost, so this additional protection will not  
8 be free.

9 There is a cost to privacy protection. To share  
10 a quick example, by the general counsel of Wells Fargo  
11 which we cited in our submission to the Commission, the  
12 Economic Union has arguably the best consumer protection  
13 laws for privacy in the world. The cost of marketing --  
14 the average cost of obtaining a mortgage loan are a full  
15 two points higher in the EU than they are here,  
16 principally as argued by the general counsel of Wells  
17 Fargo, because of the sharing of information or the lack  
18 thereof in the EU.

19 So if you ask the consumer, Do you want privacy,  
20 sure, average consumer wants privacy. However, if it  
21 costs two points on their mortgage the answer is likely  
22 to be, I don't want that much privacy.

23 Next point, second reason that this is  
24 inadequate is consumers routinely consent to the  
25 transfer of billing information. They know how to do

1 it. Consumers understand the disclosures. In  
2 preacquired account market in some forms, it's been  
3 going on for at least 50 years, in other forms for 25  
4 years.

5 Consumers do understand. The prestigious Luntz  
6 Research Organization presented a national, 2,000  
7 person survey and asked three critical questions, which  
8 was the understandability, the fairness and the  
9 responsibility of preacquired account marketing script.

10 In the overwhelming results, 85 percent of  
11 Americans polled understood the disclosures of  
12 preacquired account marketing. 87 percent thought that  
13 the method was responsible, and 88 percent thought the  
14 method was fair.

15 These results are overwhelming to put it into  
16 context because as any lobbying entity, or excuse me,  
17 any entity charged with doing the consumer survey will  
18 tell you, 70 percent is considered consensus. We've  
19 provided a copy of that report. We'll provide another  
20 one today, so here 80 percent is simply extraordinary,  
21 so people do understand.

22 Quickly, as to a level of complaints using an  
23 actual example, if a marketing company using preacquired  
24 account marketing has 39 regulatory complaints but  
25 markets to 822,000 entities or persons rather than use

1 that methodology of billing, that's a complaint level of  
2 regulatory complaints to the AG, BBB, et cetera, of  
3 .000047 percent regarding that billing method. In short,  
4 telemarketing reaches millions of people so you have  
5 millions of people who aren't complaining.

6 Third area and final area is that existing  
7 protections of GLB are there. Secondly, industry, the  
8 ERA, which Linda will speak about, has best practices.  
9 Many entities exceed those best practices and  
10 importantly, merchant processors have a 1 percent  
11 threshold essentially.

12 So if a telemarketer has charge backs that  
13 exceed 1 percent, over a period of time that merchant  
14 processor be it VISA, Master Card, et cetera, will  
15 terminate the relationship with the merchant processor  
16 so the risk of harm is controlled by the self-imposed  
17 regulatory effects of the merchant processor, the  
18 companies, largely financial institutions, cover this,  
19 and by the common sense of the consumer themselves.

20 Finally the proposal is simply not legally  
21 adequate in that a per se prohibition would simply  
22 exceed the Commission's authority. There has  
23 been no legislation in the last 50 years by any state or  
24 federal agency banning per se the transfer of billing  
25 information. That is still true today.

1           If, in fact, any adequate rule that put a  
2 balanced approach out, which is adequate disclosure we  
3 believe, and allows it to be permissible would have to be  
4 preemptive because of the massive conflicts of Attorneys  
5 General, quasi regulation imposed by any private  
6 Attorney General's -- excuse me, not private Attorney  
7 General, but any potential Attorney General  
8 interpretation of vague rules or definitions like  
9 billing information, preacquired account marketing.

10           As you know the 50 Attorneys General are  
11 empowered to determine for themselves what the meaning  
12 is. Without clear description of what those definitions  
13 are, we're left with quasi legislation by the Attorneys  
14 General, and I urge the Commission not to engage in  
15 quasi legislation itself, but to achieve a balanced  
16 rule. Thank you.

17           MS. HARRINGTON: Thank you, George. Katie, a  
18 question?

19           MS. HARRINGTON-MCBRIDE: This really goes to  
20 scope. I'm beating the bushes again to find  
21 statistics. It seems to me that one of the most  
22 prevalent arguments that was raised in the comments, and  
23 it was raised by George in his comment just now, is that  
24 it is unsafe to telemarket in the absence of preacquired  
25 account telemarketing, and I guess what I'm wondering is

1    how much telemarketing right now actually involves  
2    preacquired account telemarketing, and is it in fact  
3    unsafe.

4                   And I don't say that to stop the discussion, but  
5    just as each of you goes around and answers, if you can  
6    address that, I would appreciate it.

7                   MS. HARRINGTON:  If I could bootstrap on to  
8    that, if it is unsafe to consumers to have them  
9    providing their credit card numbers to telemarketers,  
10   can you back that up with some either very significant  
11   anecdotal recitations or something else?  That is,  
12   what's the basis for saying that it's dangerous to  
13   consumers for telemarketers to have their credit card  
14   numbers.

15                   We're going to bootstrap on another question  
16   from Reilly Dolan.

17                   MR. DOLAN:  Which is:  Why is telemarketing  
18   different from going into a retail store and pulling out  
19   your wallet to give to the sales clerk or going into a  
20   restaurant to give to the wait person your credit card  
21   so that you can complete your transaction?

22                   MS. HARRINGTON:  Okay.  So we've added those  
23   questions to the next.  Laura?

24                   MS. POLACHECK:  Laura Polacheck, AARP.  I find  
25   it nonsensical to think that a third-party can have your

1 billing information but it's somehow unsafe to give that  
2 information directly to a telemarketer when some unknown  
3 source has the billing information.

4           The way the telemarketers operate is to call  
5 consumers and to get payment over the telephone. Right  
6 now telemarketers can access your checking account with  
7 oral authorization, so to have the implication that you  
8 should not give your credit card number, which is a lot  
9 more protection than a direct debit to your checking  
10 account, to the telemarketer is somehow more unsafe than  
11 being able to drain your checking account really is  
12 illogical.

13           I think the FTC has seen the potential for  
14 abuse. Frankly, the unauthorized use of credit  
15 information is a criminal activity in many  
16 circumstances, so to argue somehow that this is an  
17 additional protection for consumers in our mind makes no  
18 sense.

19           To imply that the consumer who is frankly  
20 perhaps disturbed by a telemarketing call and that it's  
21 more inconvenient for the consumer to get their credit  
22 card than to have an unknown source debit their account  
23 without their knowledge, I don't think any consumer  
24 would ever agree with that statement.

25           We have surveys from Minnesota and New Jersey

1 that show over 90 percent of consumers believe that  
2 written authorization should be required before you  
3 debit a checking account. We've seen presentations  
4 where people are incredulous.

5 Our board of directors simply did not believe it  
6 was possible. They argued you go into the bank, they  
7 need to see your identification and signature. They  
8 could not believe it was possible to have a payment  
9 method where you could go into someone's checking  
10 account.

11 So certainly there are more protections around a  
12 credit card transfer. If the consumer doesn't realize  
13 that their credit card is being charged, that protection  
14 goes away and an after the fact remedy is simply  
15 inefficient.

16 Basically it's implied that the consumer can  
17 check their credit card billing statement to see whether  
18 or not an unauthorized charge has been added, which the  
19 damage has already been done. It's basically saying  
20 we're going to allow a practice that is potentially very  
21 abusive, and it's up to the consumer to correct it after  
22 the fact.

23 I think the role of the FTC is to recognize  
24 practices that they know are abusive upfront and to  
25 prevent them from occurring in the marketplace so the

1 burden is not on the consumer to make sure that they are  
2 not somehow being abused by giving out their credit card  
3 information without their knowledge.

4 MS. HARRINGTON: Thank you. Rita? Linda?

5 MS. GOLDSTEIN: Thank you. I would like to make  
6 a couple of points. Can you hear me?

7 I'm a little concerned that we're getting a  
8 little distracted from the topic here, and I think I  
9 would like to begin by saying that it is not ERA's  
10 position on this issue that the proposed ban should not  
11 be adopted because consumers are afraid to give credit  
12 card numbers to telemarketers.

13 Identity theft is an issue, and it's certainly  
14 something that the use of preacquired account  
15 information helps mitigate, but that's not the primary  
16 focus of our decision. I also want to say that, as I  
17 said in my opening comments for ERA, this is probably  
18 the most significant issue on the table.

19 What we would really like to do here today is  
20 engage in a very practical and meaningful discussion  
21 where you can understand us better and we can understand  
22 you better, so that hopefully we can really reach a  
23 compromise on this very important issue.

24 Having said that, I would like to try to reframe  
25 the discussion a little bit, if I can.

1           One of the real questions we have is what the  
2 Commission means by preacquired account information, and  
3 let me tell you why we're confused. The term  
4 preacquired account information is used frequently  
5 throughout the NPRM. When we get to the rule the term  
6 preacquired account information doesn't appear.

7           Actually what is then said is an absolute  
8 prohibition on any transfer, a per se ban on any  
9 transfer of consumer account information.

10           Now, in the NPRM, when you talk about  
11 preacquired account information, the reasons given for  
12 the ban are lack of knowledge on the part of the  
13 consumer that their credit card is going to be charged  
14 and the potential for abuse that the card will be  
15 charged without authorization.

16           It's very important to us to know if by  
17 preacquired account information you mean the transfer of  
18 that account information among marketers without  
19 consumer knowledge and consent. If what you're trying  
20 to ban is the transfer of consumer account billing  
21 information among marketers before the consumer has been  
22 told that the transfer will occur and before the  
23 consumer has consented, as we indicated in our comments  
24 to you, we have no quarrel with the Commission.

25           We agree, but the way the rule has been written,

1 the rule would prohibit the transfer of account billing  
2 information even with disclosure to the consumer and  
3 obtaining their express authorization.

4 Now, as we get into this issue, it's a very  
5 complicated issue, and I think it's also important to  
6 look at the different scenarios in which these various  
7 transfers can occur.

8 MS. HARRINGTON: Linda, I'm going to come back  
9 to you, but you've put a question on the table, what is  
10 it that we're concerned about specifically, and I'm  
11 going to turn to Katie to respond.

12 MS. HARRINGTON-MCBRIDE: As we've stated in the  
13 NPRM, preacquired account information or preacquired  
14 account marketing is actually a phrase that was coined  
15 by someone here at the table, Prentiss Cox, to describe  
16 the situation, and this is what we've limited it to,  
17 where a telemarketer already possesses information  
18 necessary to bill charges to a consumer at the time the  
19 telemarketing call is initiated.

20 You are correct in saying that that term is not  
21 used in the rule itself, but rather in the NPRM to  
22 describe the practice that we're trying to get at. What  
23 we used in the rule itself was the term billing  
24 information, which is broader than account information  
25 because we have evidence of instances where consent was

1 obtained using information other than account number.

2           So we felt that the definition of billing  
3 information needed to be sufficiently broad to  
4 encapsulate an instance where someone's mother's maiden  
5 name was used to allow access to the account.

6           We state in relevant part at page 4499 of the  
7 NPRM that the definition -- that we intend the term  
8 billing information to include a variety of billing  
9 account numbers, which wouldn't be surprising, or a  
10 variety of other things like the date of birth, mother's  
11 maiden name, et cetera, or any other information used as  
12 proof of authorization to affect a charge against a  
13 person's account, and that's what we meant.

14           MS. GOLDSTEIN: Can I then take a couple  
15 scenarios and let's see how that plays out. One  
16 situation would be in an outbound telemarketing  
17 situation, and I think we explained this in our  
18 comments. What typically might occur is L.L. Bean might  
19 enter into some type of infinity agreement with  
20 Timberland to say, We would like you to sell your boots  
21 you can sell your boots to our customers. You make  
22 better boots than we do. We think it would be a value  
23 to our customers to sell your boots.

24           So L.L. Bean would provide the name and  
25 telephone number, and this is typically the way this is

1 done, a name and a telephone number, and they might  
2 provide some unique identifier, it could be a four digit  
3 code. It might be an encrypted code that's used solely  
4 for the purpose of matching back, but the account  
5 billing number or any information that would provide  
6 access to the account is not transmitted to the  
7 telemarketer when you make that call.

8           They make the call to the consumer. They ask  
9 the consumer if they want to order the boots. If the  
10 consumer says yes, that information is then transferred  
11 to Timberland. Timberland would go back to L.L. Bean  
12 and say, This customer has accepted our offer. We would  
13 now like to get the account information to bill the  
14 consumer for something that they've authorized.

15           Presumably during that call the consumer would  
16 be told, We're going to bill this credit card. They  
17 would be given enough information to know what card is  
18 going to be billed and they would have expressed  
19 consent. In that preacquired?

20           MS. HARRINGTON-MCBRIDE: In your hypothetical,  
21 are you saying that it's impossible for the boot maker,  
22 the actual seller in that transaction to obtain the  
23 consumer's account information directly.

24           MS. GOLDSTEIN: I'm not saying it's impossible,  
25 but it is a convenience. I'm not focusing now on the

1 reasons, but I'm focusing on whether that is a scenario  
2 that would fall within the prohibition.

3 MS. HARRINGTON-MCBRIDE: What we've said in the  
4 rule is that if there are two sellers, then there are  
5 two transactions, so you're talking about a new set of  
6 disclosures, and I think that that transfer --

7 MS. GOLDSTEIN: There aren't two sellers. There  
8 there's one seller. I'm not talking about an up-sell  
9 right now.

10 MS. HARRINGTON-MCBRIDE: Timberland is not the  
11 seller of the boot?

12 MS. GOLDSTEIN: Timberland is the seller of the  
13 boot. They've entered into a list marketing arrangement  
14 with L.L. Bean to market to their customers in an  
15 affinity marketing program, and if the consumer says  
16 yes, to us the key is and what we aren't sure you fully  
17 understand is that in that scenario, the account  
18 information is not transferred until after the consumer  
19 says yes. There will be a transfer that occurs.

20 MS. HARRINGTON-MCBRIDE: If there aren't two  
21 sellers, why is there a transfer of account  
22 information? I'm sorry.

23 MR. ANDERSON: Because Timberland is selling  
24 L.L. Bean --

25 MR. KIRKPATRICK: The other way around.

1           MR. ANDERSON: I think, Linda, has the consumer  
2 ever given Timberland their account information?

3           MS. GOLDSTEIN: No.

4           MR. ANDERSON: They've given it to L.L. Bean.

5           MS. GOLDSTEIN: Correct.

6           MR. ANDERSON: There are two .

7           MS. HARRINGTON: Are you saying until the  
8 consumer says yes to what, that they want to buy the  
9 boots or that they're willing to give up their account  
10 information or that they're consenting to --

11          MS. GOLDSTEIN: Both. They're consenting.

12          MS. HARRINGTON: All right.

13          MS. GOLDSTEIN: They're consenting to the  
14 purchase and they're consenting, they're saying, yes,  
15 you can go ahead and get my account information from  
16 L.L. Bean and bill the same account that they have on  
17 file, so I don't have to pull out my credit card again.

18          MS. HARRINGTON: Allen, what were you going to  
19 say? We're going to need to move to some other people,  
20 but we'll come back, and we're going to have a full  
21 discussion on this, but Prentiss?

22          MR. COX: Prentiss Cox, Minnesota Attorney  
23 General's office. I would like to take an opportunity  
24 as Linda did to briefly reframe the issue. The problem  
25 here is what is consent. You can't get disclosure

1 consent when the control of whether you consented is in  
2 the marketer and not in the consumer.

3 In a preacquired situation, the consumer doesn't  
4 have that control because we have shorthand ways of  
5 signaling consent in our society. We aren't many  
6 lawyers out there. Josh, who has an engineering -- he  
7 has a trade school degree and comes home from a job and  
8 Esther is sitting on the couch at 85 years old doesn't  
9 understand all this.

10 They just get a call from somebody. What they  
11 know is I've got to sign my name, I've got to give  
12 somebody my credit card or in the context of a  
13 telemarketing transaction, I have to read my account  
14 number to the person or I have to pay cash, and what  
15 this does is by circumventing those forms of consent, it  
16 makes it impossible for consumers to control the  
17 transactions.

18 So where the industry's central point is is what  
19 we want to be able to continue to do is to get people's  
20 consent to allow us to use our preacquired ability to  
21 charge your account, and once we get that consent, then  
22 it's not preacquired account telemarketing.

23 From the consumer's perspective it makes  
24 absolutely no difference, whether that button that the  
25 telemarketer pushes that said, yes, they consented,

1 whether there's on the screen the account number or not  
2 the account number.

3 The critical point is the telemarketer decides  
4 whether to push the button, and they don't have to get  
5 that shorthand acknowledgment of the consent for the  
6 consumer. That's the problem.

7 I have two other points I'll do real quickly.  
8 One is to address this situation, I didn't really  
9 understand Linda's hypothetical, so I won't address that  
10 specifically, but in the comments, there was a clear  
11 hypothetical put forth with a travel agent, and I think  
12 we have two general responses to that.

13 One is I don't think in that situation or this  
14 that the sale necessarily comes within the scope of the  
15 rule because it's unclear to me who the seller is, et  
16 cetera, but here's the more important thing.

17 The exception provision in 310.4 A 5, got it  
18 right, the exception provision does need to be  
19 clarified. The critical phrase there is pursuant to a  
20 transaction, two points.

21 One is nothing in the industry comments  
22 addresses the outbound situation or the inbound  
23 transfer. We have outbound. We have inbound. Inbound  
24 we have a transfer to another marketer or we have  
25 internal inbound, and we have seller retention.

1           Nothing in the industry comments addresses the  
2           outbound or the in bound transfer. There's absolutely  
3           no reason not to apply the rule in those situations  
4           unless you buy this privacy argument, which I will get  
5           to my last point.

6           In terms of the inbound internal, in the travel  
7           agency example, if you define pursuant -- the critical  
8           phrase here is pursuant to a transaction, and if you  
9           define transaction as including the trip, then I think  
10          it falls within the exception. It takes care of that  
11          problem, and it wouldn't fall under the rule.

12          The same thing here. If you're buying clothes  
13          from L.L. Bean, if you define pursuant to a transaction  
14          as buying clothes, then I think that takes care of all  
15          the common sense problems and makes the rule work better,  
16          and it does need clarification there.

17          What it shouldn't cover is when you're done  
18          arranging your trip with the travel agency and the  
19          travel agent says, By the way I have a free trial offer  
20          on this magazine and this is a great deal and goes into  
21          the great detail and five minutes later turns on a tape  
22          recorder and says, now do you understand this deal, et  
23          cetera, and somewhere in there packs in the fact that  
24          they're going to use the same credit card number you  
25          gave them five minutes ago to arrange your trip to

1 Orlando, that is what should come within the context of  
2 the rule.

3 Third point is privacy. My primary reaction to  
4 privacy is let's come back to planet earth. This has  
5 absolutely -- this argument doesn't make any sense in  
6 the context of average people. If you take 100  
7 Americans and put them in a room, I bet 99 of them,  
8 republicans, democrats and Jessie Ventura himself would  
9 agree that you don't protect consumer privacy by giving  
10 people the right to charge your account without you even  
11 knowing they have the right to charge your account when  
12 they call you up.

13 Your control of the transaction comes from you  
14 reading the number. It turns on that head this notion  
15 that we've told people, Don't give out your number. We  
16 tell them don't give out your number because that's your  
17 control of the transaction. That's why we tell them  
18 that. Once you give out your number, that's when you  
19 give consideration.

20 The second point of privacy real quick is  
21 vulnerable people. One of the critical problems in  
22 preacquired account telemarketing is it's directed at  
23 vulnerable consumers. We review tapes. At our last  
24 tape review, we reviewed 155 of these so called so  
25 verification tapes. 61 percent of those tapes were

1 consumers over the age of 60.

2 This marketing is aimed at vulnerable elderly  
3 consumers. I had a former telemarketer tell me, That's  
4 who we sell to, and that's what our numbers show when we  
5 review the tapes.

6 You also have the problem with people who don't  
7 speak English. I reviewed one of these tapes. Somebody  
8 said "No se ingles," and they went ahead, charged their  
9 account.

10 The last point is the privacy argument is to me,  
11 if it's not cynical, I can't look into people's hearts,  
12 it's contrary to this industry's prior practices. This  
13 is the industry that to a large extent brought about the  
14 Gramm Leach Bliley debate itself.

15 This is an industry that takes not share account  
16 numbers and the ability to share accounts, but the kind  
17 of information that is shared is how much you have in  
18 your bank account, how you pay your mortgage. There was  
19 credit scoring information provided. That is not the  
20 concern of this industry.

21 MS. HARRINGTON: Reilly, a question?

22 MR. DOLAN: It's a question as much as a  
23 comment. The table is discussing consent, but I think  
24 one of the questions is what exactly is adequate  
25 consent. Many scripts, there will be complex questions,

1 perhaps a run on of benefits or whatever that are being  
2 offered. The information buried in there is, Your  
3 credit card will be charged, and then there will be a  
4 question at the very end that says, Can we send you the  
5 materials.

6           The consumer may be answering the last question  
7 posed as opposed to the run on in which this information  
8 was placed in there. In addition, sometimes scripts are  
9 asking for an okay as the answer, and many people use  
10 okay as a space filler, so I just want people, when  
11 they're presenting comments, to think and respond to  
12 what would be considered adequate consent, if that's  
13 what your particular client's position is.

14           MS. HARRINGTON: We're going to hear from Roger,  
15 Mallory and Char.

16           MR. KIRKPATRICK: I wanted to comment on what  
17 Prentiss said about the targeting. I'm not going to  
18 talk about outbound because we don't do this in connection  
19 with outbound, but in the inbound situation here's the  
20 targeting that we do.

21           Somebody calls a golf catalog and they're buying  
22 whatever kind of golf equipment they're buying, and at  
23 the end of the call they're offered Golf Digest Magazine  
24 or someone calls Spiegel catalog and they're offered a  
25 fashion magazine.

1           Now, I can't guarantee you that targeting that  
2 precise is done every time, but every time that there's  
3 an opportunity to do it is because that's the obvious best  
4 way to get sales.

5           We're basically dealing with inbound situations  
6 where the person has chosen to call a catalog. They've  
7 gotten out their credit card or maybe they haven't  
8 because maybe they know the catalog already has it if  
9 they're a regular customer, but in most situations  
10 they've gotten out their credit card. They've just read  
11 the number at the end of the sale.

12           So when you're talking about the total length of  
13 call, they've just read their credit card in most  
14 situations five seconds before, when they're presented  
15 with the magazine offer. I encourage the Commission to  
16 do whatever it thinks is necessary in terms of adequacy  
17 and clarity of disclosures and permission. We're not  
18 looking to cut any corners there.

19           I don't know if you noticed, but I defined as  
20 two separate disclosures, the disclosure that there will  
21 be a transfer and a disclosure of who it will be  
22 transferred to. I can see the point that you could put  
23 together a pretty slick statement which you could  
24 portray as being disclosure and consent. I think you  
25 guys should address that as specifically as you feel you

1 need to.

2 I think it's incredibly annoying to a customer  
3 who has just given their credit card number by, in most  
4 cases, the same person they were just talking to, to be  
5 asked by that person to give it again. I know issues  
6 come up on who's the seller. Is it a new sale or not.  
7 I encourage you to find a way to get past that because  
8 I don't think from a consumer perception point of view  
9 it matters.

10 They just called somebody. They're talking to  
11 the same somebody they were just talking to five minutes  
12 ago. They're being offered a different product. I  
13 don't think consumers are sitting there thinking, Now,  
14 I'm talking to somebody else.

15 MS. HARRINGTON: Mallory?

16 MR. DUNCAN: This is a fairly complicated issue,  
17 and I guess I want to ask that we not throw the baby out  
18 with the bath water, because if I read the proposal  
19 correctly, it's proposing a fairly radical change in the  
20 way we do business, and I would like to go back to a  
21 very simple cookbook example.

22 I pick up my dinner from a local grocery store  
23 near my home run by Mrs. Lee. I will call her. She keeps  
24 an account ledger for me, and I will say, Mrs. Lee, I  
25 would like a chicken blank and blank, and please put

1 that on my account. In this case inbound outbound is  
2 not the issue here. She does that, and at the end of  
3 the month I receive a bill, and I pay that.

4 This is the same way in which many retailers  
5 have operated over the years. Now, retailers offer  
6 credit in a lot of different ways. Some do it for  
7 proprietary cards. Some do it through private label  
8 cards. As the Commission is probably aware, proprietary  
9 credit is credit that's issued directly by the retailer  
10 out of their back office like a Boston department store  
11 or Bontons.

12 Private label credit is issued by a  
13 third-party. Many times companies are represented by  
14 George here, Wallace here, and it appears to the  
15 customer that that card is from that particular  
16 retailer. A classic example is JC Penney, Banana  
17 Republic, Wal-Mart.

18 Some companies do both. Federated Department  
19 Stores issues some of their Bloomingdale's cards through  
20 I believe it's GE Capital, and they issue some of their  
21 Bloomingdale's card directly.

22 To the customer, again the cards look very, very  
23 similar, so it is quite possible that a customer during  
24 a marketing call with Bloomingdale's might at some point  
25 hear during the call, Ms. Jones, no, she's a

1 Bloomingdale's customer, Ms. Jones, may we charge that  
2 to your Bloomies card?

3           We cannot have a rule where the traditional  
4 charging of the card that takes place where she says  
5 yes, go ahead, and if it happens to be issued by  
6 Bloomies' back room we could make the charge, but if  
7 it's issued by GE Capital for Bloomies we have to go  
8 through another procedure where we say, Well, sorry,  
9 Mrs. Jones, find your card because yours is issued not by  
10 our back room and we have to look up the number because  
11 we're not allowed to have GE Capital transfer that  
12 number from them to us.

13           This precise problem the Commission recognized  
14 when Gramm Leach Bliley was drafted, and the Commission  
15 was very much involved in coming up with 502 E1B under  
16 GLB to try to resolve it.

17           So that's the scope of the problem that we've  
18 got here, at least from our perspective, and I hope  
19 whatever rule we come up with is not going to put those  
20 two identical Ms. Jones in completely different camps.

21           MS. HARRINGTON: I was looking at the NPRM on  
22 page 4543 in subparagraph 5, which begins just right at  
23 the beginning of that page, and actually Katie was also  
24 looking at, so I'm going to have her read from that just  
25 to clarify.

1 MS. HARRINGTON-MCBRIDE: Yes. If I understand  
2 correctly, Mallory, the situation you're talking about,  
3 the sharing that occurs there is not because something  
4 additional has been marketed, but simply to process a  
5 transaction and that was something --

6 MR. DUNCAN: Actually in that case, the  
7 marketing is -- -- I'm just looking at the rule, and the  
8 rule says "receiving from any person other than the  
9 consumer or donor for use in telemarketing any consumer  
10 or donor's billing information."

11 MS. HARRINGTON-MCBRIDE: Right. A little  
12 further on the proviso which says "this paragraph does  
13 not apply to the transfer of any consumer or donor's  
14 billing information to process a payment for goods or  
15 services or a charitable contribution pursuant to a  
16 transaction in which the consumer or donor has disclosed  
17 his or her billing information and has authorized the  
18 use of such billing information to process".

19 MR. DUNCAN: Has disclosed his or her billing  
20 information.

21 MR. THOMAS: There's no disclosure.

22 MR. DUNCAN: There's no disclosure, may I put  
23 that on your Bloomies card?

24 MS. HARRINGTON-MCBRIDE: The idea here was that  
25 we do need to have consumers actually cognizant of what

1 information, what account will be charged, and so we had  
2 discussed a disclosure.

3 MR. DUNCAN: You see the difficulty you create.

4 MS. HARRINGTON-MCBRIDE: Without having the  
5 consumer actually say what the account number is.

6 MR. DUNCAN: That's correct.

7 MS. HARRINGTON: Char.

8 MS. PAGAR: Char Pagar for PMA. I just wanted  
9 to ask the Commission staffers to step back a little bit  
10 and think about the ban on preacquired account  
11 information. This industry, this method of marketing is  
12 something that has been evolving over some time, and I  
13 understand that you have brought cases and that the  
14 states have brought cases, and please understand that  
15 the industries have been evolving in this area and has  
16 been attempting to respond to regulators' concerns.

17 I'm a little bit concerned because what I'm  
18 hearing from some of the consumer groups and possibly  
19 the Attorneys General is this idea that marketers have  
20 this unlimited sort of incentive to manufacture consent  
21 from consumers, and that's really not the case.

22 I mean, there is very much -- there are built in  
23 incentives to not manufacture consent, and one of the  
24 first ones is something that George mentioned and that  
25 is charge back rates and charge back levels and merchant

1 processors who will close down merchant accounts very  
2 easily if a charge back goes above 1 percent or 1.25  
3 percent.

4 I think that the whole issue needs to be looked  
5 at in context, and you need to sort of be aware that  
6 that particular limitation is already there. It's  
7 already built in, and while there may be some  
8 unscrupulous marketers who in the past have gone from  
9 one processor to another, that is not the case with the  
10 vast majority of very legitimate businesses who have an  
11 interest in engaging in this sort of practice and doing  
12 so very responsibly.

13 MS. HARRINGTON: We're going to have Elliott,  
14 Linda and then Rita.

15 MR. BERG: Thank you. Elliott Berg for NAAG. I  
16 would like to address consumer expectations and  
17 understanding, consumer losses and the issue of intent.

18 As Prentiss mentioned, the States for years in  
19 our consumer education programs have been stressing the  
20 message that there are certain ways that you can give  
21 out authorization to be billed for something. You can  
22 write a check. You can give a credit card number.

23 This information is highly private. We  
24 underscore that with consumers, and yet what the  
25 telemarketing industry would have people understand,

1 contrary to normal expectations, is that all of that  
2 information is there in the hands of telemarketing  
3 companies before they even make an inbound call or  
4 receive an outbound call.

5 Now, in the verification context, one might say,  
6 Well, there's an opportunity for people to say on the  
7 phone in a recorded situation yes, I give my consent to  
8 be billed, but our repeated experience in the States as  
9 a whole is that verification doesn't work because people  
10 don't understand what's going on.

11 The discussions are very opaque. They are we  
12 obscure. People don't understand when they say yes or  
13 more commonly yeah what they're actually doing, and the  
14 only way that you can render that consumer protection  
15 message with the privacy of your billing information  
16 consistent with normal commerce is to give people the  
17 tools that they need and only the consumers those tools  
18 to give authorization and allow for billing, whether  
19 it's by check or by credit card.

20 I would suggest, to pick up a phrase that Char  
21 mentioned, that there is in fact in many situations  
22 consent being manufactured in the verification context  
23 and it is very rare, although it has happened, that  
24 initial telemarketing calls are tape-recorded, and when  
25 you hear those you realize why normally they're not

1 recorded, because that's where consumers' expectations  
2 and understanding are built.

3           The verification is just a formality at the end  
4 that provides in effect a defense for a telemarketing  
5 company that might have an inquiry from a state or a  
6 consumer.

7           Secondly, with respect to consumer losses, it's  
8 very difficult to get hard information on this. I think  
9 the overwhelming experience of the states is that there  
10 are many, many consumers that are being billed without  
11 authorization. It's important to stress the tip of the  
12 iceberg issue here because when you look at, for  
13 example, charge back figures and you see that they're at  
14 a certain percentage, maybe a low percentage, that does  
15 not mean that that percentage indicates how many  
16 consumers or what percent of the consumer population  
17 that did business with the particular company had a  
18 problem.

19           What it reflects is those people who had a  
20 problem and were knowledgeable enough, aggressive  
21 enough, persevered enough to follow through and try to  
22 get a charge back. There are so many hurdles that are  
23 set up for ordinary folks and lawyers to try to get  
24 their money back, and so the charge back filter does not  
25 work.

1           I wanted to put out one number here, and I  
2 realize that it's fairly limited because it pertains to  
3 one company in one state, and that's my state of  
4 Vermont. We have a very small population, but in a case  
5 involving a single retailer who does most of its  
6 business over the telephone, both inbound and outbound  
7 calls, we took a look at the amount of money consumers  
8 paid out over about a three and a half year period for  
9 renewal charges on their credit cards in a situation  
10 where the telemarketer script did not call for consumer  
11 consent.

12           Consumers were never asked if they wanted to be  
13 billed in that respect, and the total amount that was  
14 paid out was \$300,000. I don't know if we had a single  
15 complaint from that subset of the consumers. If you  
16 take that \$300,000 figure, annualize it and extrapolate  
17 it nationally, you're talking about almost \$50 million  
18 one company.

19           Even if you assume that half of the consumers  
20 knew what was doing on, which I think would be very  
21 generous, you're still talking about a huge ground swell  
22 of dollars in the other direction of consumer losses as  
23 a result of preacquired account information because  
24 that's how those people were billed. That's the only  
25 way that the company was able to bill them.

1           The last point I wanted to make reflecting  
2 NAAG's comments on 310.4 A 5 is that there is a phrase  
3 in the language that says for use in telemarketing, and  
4 there is a concern that we noted in our comments about  
5 the possibility or likelihood that that might be viewed  
6 as requiring of showing of intent. I don't believe  
7 that's what the Commission meant, but we've proposed  
8 alternative language in our comments that would take  
9 away any requirement that the Commission and the states  
10 prove the intent that surrounded the transfer of the  
11 information at the time it was disclosed or received.

12           Thank you.

13           MS. HARRINGTON: Thanks, Elliott. Linda, then  
14 Rita, then George.

15           MS. GOLDSTEIN: Thank you. I wanted to try to  
16 address some of Reilly's issues and some of the issues  
17 that have been raised by the states, and again as a  
18 backdrop, I think it's important to recognize that we  
19 are not advocating maintaining the status quo on this  
20 issue.

21           We've acknowledged in our comments that this is  
22 an area of marketing. We recognize that there have been  
23 some abuses. We think that the abuses are atypical of  
24 the industry as a whole. They represent isolated  
25 instances, but nonetheless we recognize a need for a

1 change, and we support the Commission's desire to  
2 include something in the Telemarketing Sales Rule that  
3 would address this issue.

4 All of the comments that have been raised thus  
5 far by the states really have still gone to the  
6 fundamental issues that in all of these instances, even  
7 the consumer didn't know that their credit card was  
8 about to be charged or they didn't authorize the  
9 transfer, and we believe if those are the problems, then  
10 the solutions are not necessarily a ban, but the  
11 Commission is obligated to see if there is a less  
12 restrictive way to ensure that consumers understand when  
13 their credit card would be charged and that they  
14 authorize that consent.

15 Now, Reilly raised the question, what kinds of  
16 disclosures are we talking about, and I'm here to tell  
17 you that the industry gets it. We know some of the  
18 scripts that you've looked at in the past, and we're not  
19 suggesting to you that those are the kinds of disclosures  
20 that we think will pass muster under a revised rule.

21 In our comments, we set forth some very specific  
22 disclosures. I mean, there is some crossover here  
23 between the up-sell issue and the preacquired account  
24 information because they often go together, but if you  
25 take our disclosure comments in both sections, we're

1 talking a lot about some very specific mandated  
2 disclosures which would include the fact that a separate  
3 sale is about to occur, that's you're dealing with a  
4 separate seller, the identity of the seller.

5 On the preacquired account information side, we  
6 recommend a disclosure of all of the material billing  
7 information, the identity of the seller that would be  
8 charging the account, the date or frequency of the  
9 charge and sufficient information to enable the consumer  
10 to identify which credit card would in fact be charged.

11 We then went on to suggest and recommend to the  
12 Commission that they require verifiable express  
13 authorization to these charges. We recognize that some  
14 higher standard of verification may be required here  
15 than would otherwise be required in the course of an  
16 ordinary sale.

17 MS. HARRINGTON: Let me ask your thought on  
18 something that you just mentioned from the ERA best  
19 practices. You have or the organization has been quite  
20 specific in enumerating the information that should be  
21 disclosed in a clear and conspicuous manner and  
22 enumerating the consent, the items to which the consumer  
23 should give specific consent.

24 As you know, in the Telemarketing Sales Rule, up  
25 until now, the Commission has taken kind of a

1 performance standard approach to disclosure  
2 requirements. It hasn't scripted disclosures, but  
3 because the harm that we have seen in the cases that  
4 we've done, that the State's have seen in the cases that  
5 they've done in this area is so great or has been so  
6 great.

7           Because of the problems that we've seen of  
8 obscure disclosure, that's putting it charitably, what  
9 would your view be if we were to take an approach  
10 different than the one that's been proposed to mandate  
11 specific disclosures?

12           MS. GOLDSTEIN: I think we would certainly be  
13 willing to look at probably something that is a hybrid.  
14 We would want not want the exact language that has to be  
15 utilized to be mandated because different marketers have  
16 a different style. Some use more folksy types of  
17 language. Different marketers adopt styles that  
18 generally appeal to their target audience.

19           I think certainly in our comments would reflect  
20 that we would be amenable to specific items of  
21 information that would have to be disclosed, so we are  
22 certainly willing to go beyond a catchall of all  
23 material terms and conditions and to identify with  
24 specificity the kind of information that would have to  
25 be disclosed.

1           Frankly I think that would give you enough  
2 protection on some of these like the date or frequency  
3 of the charge, I mean there's not a lot of ways to say  
4 that. Maybe there are one or two, but there aren't a  
5 lot of creative ways to obfuscate those disclosures.

6           So I guess our answer would be yes. ERA  
7 guidelines are fairly specific about the kinds of  
8 information that has to be disclosed, and most of our  
9 members complying now have check lists that they check  
10 their scripts off against to make sure that each of  
11 those items of information are in there. We should just  
12 prefer that you not actually script out how those  
13 disclosures would be made.

14           As you know, we've also made recommendations for  
15 express verifiable authorization, which would include  
16 tape-recorded verification as one of the means, and I  
17 think it's important really to note for the record that,  
18 I know that the States have commented on numerous  
19 experiences that they've had, and I know the Commission  
20 has before it certain cases where the allegation at  
21 least is that authorization was not obtained.

22           We are very, very concerned about this in the  
23 inbound up-sell context in my prior comments,  
24 so I won't repeat the scenario, but that's a very,  
25 very significant component of the business, and a

1 vast majority of sales, a large percentage of sales are  
2 conducted via inbound up-sells.

3 I don't think the States frankly have really had  
4 much experience with taped verification on inbound  
5 up-sells because it's only recently that marketers have  
6 really begun to take those calls. The cost and the  
7 expense and the technology for taping on inbound  
8 up-sells is much more expensive.

9 Marketers for a long time have been taping on  
10 outbound but the taping on inbound up-sells is a fairly  
11 new development, and I don't think the States really  
12 have that much experience yet with what the impact is  
13 going to be on consumer complaint levels and how the  
14 integrity of sales are going to be improved as a result  
15 of the taped verification that is not being implemented  
16 on a fairly widespread basis.

17 MS. HARRINGTON: Rita?

18 MS. COHEN: I wanted to step back and go to your  
19 question I think initially which was, What can be done  
20 to prevent unauthorized charges, and I think that that  
21 is in fact the key, and I agree with a lot of what Linda  
22 said, that we believe that if you make the consumer  
23 aware that the transfer and charge will occur before the  
24 transfer and charge, and then that the consumer agrees  
25 to both the transfer and the charge, using express

1 verifiable authorization which is a concept you have  
2 introduced in the TSR and we're suggesting using the  
3 same mechanism that you proposed for the debit  
4 procedures before the transfer occurs again, and then  
5 there is then no potential for the unauthorized charge.

6 I think it's important to note that this is  
7 consistent with the spirit of the TSR in general. I  
8 don't really see why this type of transaction should be  
9 signaled out for a different method of treatment.

10 I think throughout the TSR, the concept of  
11 disclosures and consent is really what has been the  
12 foundation of the rule. I think it is clear that it has  
13 worked well. We heard yesterday about a survey that  
14 there was generally good satisfaction with telemarketing  
15 sales.

16 There certainly have been a large number of  
17 telemarketing sales. I don't think we should get caught  
18 up in the concept of abuse per se. The FTC has brought  
19 numerous enforcement actions and can continue to do so,  
20 but that the key concepts of the disclosures and the  
21 consent works for the vast majority of legitimate  
22 telemarketers.

23 MS. HARRINGTON: Thank you. George.

24 MR. WALLACE: Thank you. I take it today we're  
25 not having to give out our names and associations. Do

1 you remember who I am? You're new down there? George  
2 Wallace. There's two Georges at the table today.

3 First of all, what we wanted to stress was the  
4 solutions that Linda and Rita and others have all  
5 mentioned appear to be the narrower approach and the  
6 approach which is yet adequate to deal with the  
7 enforcement problem and the underlying human problems  
8 more importantly that the states have raised and the FTC  
9 has seen in its enforcement activities.

10 Simply here the problem is whether or not the  
11 consumer has consented, and there are rather complicated  
12 arguments being made that the consumer can never  
13 understand over the phone whether or not they're  
14 consented. I'm skeptical about that.

15 What I always thought was that oral disclosure  
16 tends to be more effective than written disclosure.  
17 That's certainly been my experience personally, and I  
18 would think that that would just be as a matter of  
19 common sense, so I think that the less restrictive way  
20 is the way to deal with this problem, and that leads in  
21 the directions that have just been discussed.

22 Second of all, with respect to our basic  
23 industries, one of the things we would like to stress  
24 with you and make sure the record reflects is that the  
25 financial services industry itself tends to use a lot of

1 affiliates and subsidiaries. This is not because of any  
2 nefarious purpose.

3           It is because of the way the regulatory system  
4 has encouraged this particular pattern. If you have an  
5 insurance agency, that needs to be a separate  
6 corporation. If you have a mortgage company because of  
7 licensing restrictions, that tends to be a separate  
8 company. If you do servicing, you tend to do that in a  
9 separate company. If you do data processing, you tend  
10 to do that in a separate company.

11           That's the way we operate. We're heavily  
12 regulated of course as bank holding companies in many  
13 instances.

14           MS. HARRINGTON: George, I understand that that  
15 may be the way that your industry operates, but just let  
16 me note that the Lands End and Timberland example is  
17 very different than that.

18           MR. WALLACE: That's the point I want to make.  
19 I think we're legitimate in our use of this, but there's  
20 a situation, for example, where one of our subsidiary  
21 calls up a customer, persuades them to purchase a  
22 product, appropriately obtains their consent and says,  
23 May we charge your account, and I believe that your rule  
24 will make that inappropriate.

25           So I think that you want to be careful about

1 that. I point out that the Gramm Leach Bliley which did  
2 work about these issues rather carefully, this was  
3 carefully looked at as part of their working on  
4 that, and you were part of that process, creates an  
5 exception for affiliates in the financial services  
6 industry.

7 I think that in addition to the one that Mallory  
8 mentioned having to do with private label cards, we have  
9 another situation where we have a peculiar  
10 structure. We think that both of those should be  
11 carried over into anything that you do as a final rule.

12 Thirdly on the amount, I understand here we have  
13 a cost benefit question of how big is the fraud problem  
14 as opposed to how many transactions are here, or how big  
15 is the fraud problem, how serious is this problem.

16 As a human being I consider any instance in  
17 which someone is defrauded to be a serious problem, but  
18 I do point out that George Sheppard mentioned that  
19 Chairman Miller's study found .000047 percent of the  
20 total transactions that are occurring in telemarketing  
21 involve complaints, so I don't know.

22 I just point that out just to underline it. If  
23 I've got the data wrong, well then so much for that  
24 comment, but I think it appears to be -- obviously it's  
25 a serious problem. On the other hand why, as Mallory

1 said, throw the baby out with the bath water.

2 If you have a less restrictive way to deal with  
3 the problem, why not deal with it that way? It's going  
4 to be more appropriate, and it's consistent with how the  
5 FTC has dealt with other problems.

6 Finally I point out with regard to Eileen's  
7 question, which she asked, do we have any information  
8 that consumers are going to be less likely or more  
9 likely to be subject to fraud if they give their  
10 account numbers over the telephone, that the FTC in a  
11 consumer alert back in the year of 2001, December of  
12 2001 specifically advised consumers not to give their  
13 account numbers over the telephone and ended with the  
14 sentence "legitimate organizations with whom you do  
15 business have the information they need and will not ask  
16 you for it."

17 Now, that's what the FTC has told consumers and  
18 presumably that was because they understood certainly as  
19 your Gramm Leach Bliley division understands as well  
20 that the encrypted account information is the absolute  
21 standard in the industry.

22 MS. HARRINGTON: Let me just say that I believe  
23 that that alert concerned calls from businesses or  
24 contact, for example Email, from businesses with whom  
25 the consumer has an established relationship who call or

1 send messages saying things like, We lost your password,  
2 we need you to update it, we've lost your security  
3 information, we need you to update it. That's the  
4 context for that alert, very different situation than  
5 this.

6 MR. WALLACE: It seems to me the point is the  
7 same is that you've been advising consumers --

8 MS. HARRINGTON: The point isn't the same. That  
9 was a particular fraud where people were calling up and  
10 saying, George, I'm calling from Citibank, we need you  
11 to reconfirm your Social Security number and your  
12 mother's maiden name.

13 MR. WALLACE: In response to that you say to  
14 them, look if it's a legitimate company, they won't need  
15 that information. That's what you told them, and now  
16 you're going to turn it around and say no, no, they do  
17 need the information, I'm just pointing it out to you.

18 It seems to me it's a much better system to  
19 operate where the consumer doesn't have to give out that  
20 information because of the very risk of the cases which  
21 you were given a consumer alert on.

22 MS. HARRINGTON: Well, I don't think you  
23 understand what we're saying, but in any case, I  
24 disagree with you.

25 MR. WALLACE: Well, should I say the same to you

1 again? I don't understand I don't think you understand  
2 what I'm saying. Anyway, go ahead. That's the end.

3 MS. HARRINGTON: We'll hear from the other  
4 George.

5 MR. THOMAS: Just a quick sort of to add a  
6 little bit to MBNA's comments. I think the industry  
7 that uses preacquired telemarketing as it is most broadly  
8 construed understands that verification needs to happen,  
9 understands what that means. The FTC has applied this  
10 type of verification consistently with respect to novel  
11 billing methods.

12 The transfer of billing information with  
13 consumer consent can be nothing more than at worst a  
14 novel billing method. Placed in that context, it's  
15 clear how to deal with it. The FTC has already examined  
16 how to deal with novel billing methods, such non  
17 traditional forms of billing as debit cards, checking  
18 account billing, mortgage account billing.

19 Perhaps it applies to E wallets which are being  
20 used more increasingly under the Internet, which the FTC  
21 didn't apply to, but these are ways how to deal with  
22 novel billing methods, so we strongly support a  
23 rational methodology that balances express verification  
24 as a tool to achieve consumer consent and allow  
25 legitimate businesses to conduct legitimate

1 transactions.

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

3 MR. ANDERSON: Linda said that they would be  
4 amenable to specific things that had to be disclosed,  
5 maybe not scripted. What if the rule said, If the  
6 consumer doesn't give the seller the account number, the  
7 seller must read the account number to the consumer.  
8 Somebody would read the account number. It seems to me  
9 that then the consumer would know that the account was  
10 going on. Is that it?

11 MR. DUNCAN: That might work in some  
12 circumstances. Again I'm going to come back to Gramm  
13 Leach Bliley which requires us to provide encrypted  
14 information in certain transactions, and so I think you  
15 would have to look again carefully that -- the seller  
16 may only have an encrypted number to give to the  
17 customer.

18 MS. HARRINGTON: Okay. That's a question that's  
19 out, and we've got a lot of people who have been waiting  
20 patiently. So if they have something to say on the  
21 question Keith just asked, please say it, and we'll try  
22 to get back to some of you who have already spoken on  
23 that question too, but let's go to first Susan and then  
24 Laura.

25 MS. GRANT: Thanks, Susan Grant, National

1 Consumers League. This is entirely different than the  
2 novel payment situation, and it's being singled out for  
3 one very important reason, because there's a much higher  
4 chance of abuse in the preacquired account situation  
5 where the vendor already has either the consumers'  
6 account number or the means through another who has a  
7 billing number.

8 I want to emphasize that it's just not credit  
9 cards. It's also bank account numbers which puts  
10 consumers, when unauthorized debit is made, in an even  
11 worse situation because they don't have the same dispute  
12 rights and the money is out of their account.

13 Unlike the novel payment situation where the  
14 consumer has given their account number and you just  
15 want to make sure that they haven't been burdened with  
16 false pretenses into giving it, just requiring a showing  
17 that they made a specific consent for this account to be  
18 used is not enough because that's invoked by law  
19 enforcement agencies after the fact, after consumers  
20 have been harmed and enforcement action is being taken  
21 to try to get their money back.

22 It doesn't prevent the harm from occurring. The  
23 only way to prevent the harm from occurring is to take  
24 away from the telemarketer the ability to charge or  
25 debit the consumer where the consumer has to be given

1 the account information in order to do that.

2 Now, from the industry comments that have been  
3 submitted, I understand that the cost of asking that  
4 consumer for that information is estimated at 25 cents a  
5 call, and I don't have any way of knowing whether it's  
6 less than that or whether that's an accurate amount, but  
7 I don't think that 25 cents is too much money to pay to  
8 ensure that your account is only going to be billed if  
9 you give your number for that specific purpose, which  
10 is, by the way, the consumer education that we give.

11 We don't say to consumers, Don't give your  
12 account number to telemarketers. We say, Only give your  
13 account number to telemarketers who you know or have  
14 checked out so that you feel fairly comfortable that  
15 they're not fraudulent, and where you're making a  
16 purchase with that specific account number, and that's  
17 the consumer education advice that we've been giving out  
18 forever.

19 If you add to the script the kinds of  
20 disclosures that are being suggested, I don't see that  
21 that's going to take less time than it would take for  
22 the consumer to affirmatively give his or her account  
23 number, but yet with the latter method, you have more  
24 assurance for both the buyer and seller that there's not  
25 going to be a problem afterwards.

1 MS. HARRINGTON-MCBRIDE: Laura?

2 MS. POLACHECK: Thank you. Laura Polacheck from  
3 AARP, and I just want to build on something Mallory said  
4 about the Chinese restaurant example. I'm glad he used  
5 that example because it does not involve telemarketing.  
6 You're getting food. You see what you're getting.  
7 You're going into the store. Even if you ordered over  
8 the phone, it's not part of a telemarketing campaign.

9 I think that's the issue is that within the  
10 context of telemarketing, you are buying something from  
11 somebody that you don't see, product you don't see,  
12 service you haven't received yet, and I think that's the  
13 reason additional protections are necessary.

14 If somebody walked up to you on the street and  
15 made the same offer, you would probably think they're  
16 crazy, but somehow because the offer is made over the  
17 telephone, there's some assurance that it's a credible  
18 source, and I think that's why it's especially important  
19 to have these sorts of protections and in light of Gramm  
20 Leach Bliley, it's been discussed.

21 Companies can freely share information with  
22 affiliates, which I don't think very many consumers  
23 fully understand, without any consent whatsoever from  
24 the consumer and even with unaffiliated third parties,  
25 there's an opt out right given but as the workshop

1 previously held by the FTC showed, I think 5 percent of  
2 the consumers took advantage of this because they didn't  
3 know this right was going to be given to them.

4           It was an insert in their bank statement. It  
5 was very confusingly written, and I think even the  
6 financial industries who are represented at the workshop  
7 said the notices were very poorly done because they  
8 thought they were very constrained about how they could  
9 present it to the consumer based on how the regulations  
10 were written.

11           So everyone agrees, even the opt out notices are  
12 not effective, so essentially you have financial  
13 institutions sharing this information. Consumers don't  
14 realize this, and then on top of it, they can use this  
15 information somehow to automatically bill a consumer is  
16 really leaving the consumer very unprotected.

17           The very short amount of time it takes for a  
18 consumer to read 16 numbers over the phone I think it's  
19 a right they very much want to keep of control of. At  
20 least we know from our members, the surveys that we've  
21 done and presentations we've made, that's a very  
22 important point.

23           MS. HARRINGTON-MCBRIDE: Tyler.

24           MR. PROCHNOW: I'm glad, I think Laura led me  
25 right into my topic, and before I get into it, and I

1 think it goes back to a question Katie had, I did want  
2 to comment on a statement made a little bit earlier,  
3 that is the belief that this type of marketing, using  
4 preacquired account information, is somehow targeted or  
5 aimed at the most vulnerable segments of the society.

6 I think that's a completely unsupportable  
7 statement. I know of no legitimate marketers out there  
8 that use this or target and however you define  
9 vulnerable, but it is certainly not a targeted program  
10 at vulnerable people, elderly people or anything along  
11 those lines.

12 I think statements like that are unsupportable  
13 by any evidence or are not provided a basis for them are  
14 detrimental to these proceedings.

15 With that in mind, I want to go back, you made a  
16 statement I think a little bit earlier asking for  
17 information regarding how many transactions are there,  
18 and I think what we've tried to do and we're certainly  
19 committed to help you along those line, to see if we can  
20 provide you information, it would be helpful for us to  
21 know where that line is drawn, what again is preacquired  
22 account information telemarketing.

23 I want to use an example that might be able to  
24 help me draw the line a little more clearly in my mind  
25 too. It's a real world example that I was faced with

1 recently. As a frequent flyer I receive constant Emails  
2 and direct mail pieces telling me about weekend flights,  
3 specials that are upcoming this weekend on a particular  
4 airline and they also to say, If you call in now and  
5 book a flight this weekend, there's also a sweepstakes  
6 that you're involved with, there's a chance to win a  
7 free trip or something else.

8           So I call in, make my reservation for the  
9 flight, and on that call they say, Mr. Prochnow, would  
10 you also like a rental car, and I say, yes for my  
11 destination. Through my frequent flier program, that  
12 airline already has all my information stored in their  
13 department.

14           They just transfer my information to the rental  
15 car company and it's billed that way, and am I correct  
16 that that practice would be prohibited?

17           MR. CERASALE: You are correct.

18           MS. HARRINGTON-MCBRIDE: You raise an  
19 interesting point. I think maybe some scope here is  
20 important. We're aware at the FTC and the States are  
21 aware of instances that I think run the gamut, from one  
22 end of the spectrum being the actual transfer of large  
23 amounts of data about consumers including their account  
24 numbers to entirely unaffiliated entities for money,  
25 just a contractual arrangement to sell lists of names,

1 numbers and account numbers -- names, phone numbers and  
2 account numbers.

3           Everything up to and including Mallory's example  
4 which seems to much more at the other end of the  
5 spectrum where you have cards issued by different people  
6 but ultimately to the consumer, it's all the same thing,  
7 and I think obviously our area of greatest concern is  
8 unauthorized charges and are we less likely to see them  
9 at the Mallory end than we are at the end where lists  
10 are transferred?

11           Probably, but I think what we're trying to do is  
12 to fine tune and to get to the middle. I think everyone  
13 has pointed out, Linda in her initial comments and  
14 others, that there are a wide variety of circumstances  
15 in which account information is shared and sometimes not  
16 even in a form from what we understand, an encrypted  
17 form, where the telemarketer him or herself cannot even  
18 see that information.

19           Yet we hear on the other side from the States  
20 who have done enforcement on this and from our own  
21 enforcement experience that it's the trigger point of  
22 the consumer having to provide that information that  
23 makes sense, so I think to some extent if we can --  
24 regardless of what is covered or isn't covered, I think  
25 we want you to tell us what the necessities are because

1 the common sense argument that consumers when they walk  
2 into a store and conduct a transaction have to provide  
3 an account number, it seems to be that that is a way  
4 that a consumer would naturally understand that they're  
5 consenting to a transaction, and so why should there be  
6 a deviation.

7 MR. HILE: Why is it different from  
8 telemarketing?

9 MS. HARRINGTON-MCBRIDE: Yes, and what does it  
10 really provide other than the savings of time?

11 MR. PROCHNOW: So what I hear from you though is  
12 somewhat a tacit admission that there is a legitimate  
13 business practice that involves preacquired account  
14 information?

15 MS. HARRINGTON-MCBRIDE: That's what we're  
16 asking on the record, Tyler. We're trying to find out  
17 what exactly the --

18 MR. PROCHNOW: Can you say what you're saying?

19 MS. HARRINGTON-MCBRIDE: We're asking, What is  
20 the scope of the practice? And I think whether we would  
21 characterize it as legitimate or illegitimate is not for  
22 today, but what we're trying to do is to see if you  
23 can -- if the practice has any legitimate purpose, we  
24 want to hear what that is.

25 If on the continuum there is some transfer of

1 information between parties that makes sense and does  
2 not harm consumers, we need to have that identified, and  
3 we need to have the practices at the other end of the  
4 spectrum separately identified.

5 MS. LEONARD: If I can just jump in really  
6 quickly. Karen Leonard. I know George mentioned three  
7 categories that at least the Consumer Choice Coalition  
8 and maybe other industry members recognize in terms of  
9 talking about what they understand preacquired account  
10 information to be. I think what he listed were third  
11 party calls, inbound calls and seller retained account  
12 information.

13 Maybe that would be a jumping off point anyway  
14 for talking about the types, the categories, so how many  
15 of those kinds of calls in each of those categories are  
16 out there? Are there other categories that haven't been  
17 captured by George's list? That can maybe be a good  
18 jumping off point.

19 MS. HARRINGTON-MCBRIDE: Jerry?

20 MR. CERASALE: Thank you, Jerry Cerasale. I  
21 wanted to just support what Rita and Linda had said and  
22 Roger and support what both you said and what Eileen had  
23 said about let's try to find a middle ground.

24 I think that the key here is what does the  
25 consumer know? Does the consumer know that in fact his

1 or her account information can be billed, and you've  
2 given consent to do that for a specific product?

3 I hope that you take the effort to go forward  
4 and look at it that way and try and find that balance in  
5 the middle, try and find the disclosures and not just go  
6 to a per se forbidden of doing that.

7 As a consumer I don't want to take out my credit  
8 card and have to read it -- I travel too much. I don't  
9 want to do it, and they transfer it. Now, your rule  
10 doesn't allow me to do that. The way your rule is  
11 written, I can't do it. I have to get it out. I don't  
12 want to do it. I'm tired of it. I travel too much, and  
13 it's a pain in the rear, and I don't want to do it.

14 So you have a situation where you're not giving  
15 a certain choice to some people. Let's look to try to  
16 protect and try and find that middle ground. I think  
17 Linda has it.

18 Now I'm going to switch from being positive to  
19 being negative, which is a little bit tougher for me to  
20 do. I don't usually do this. I'm frustrated. I get  
21 battered because DMA's numbers can't be believed because  
22 it's DMA.

23 I get asked what are my numbers and so forth.  
24 We have a situation where we have charge back accounts  
25 which are actual numbers DMA didn't do, and now they're

1 no good, can't believe them, they're not the right  
2 number.

3 I get told yesterday consumers know exactly what  
4 they're doing when they get on do-not-call lists. They  
5 know exactly concerning the existing business exception,  
6 that they don't want to hear from anybody including the  
7 people they do business with.

8 Today I hear consumers haven't the foggiest idea  
9 what the heck is going on on the telephone, so I think  
10 that we have to get past this rhetoric and get down to  
11 trying to work and compromise and try and keep a  
12 business that is \$270 plus billion a year that consumers  
13 use and like and try and protect consumers that are  
14 harmed.

15 There are consumers that are harmed, and we have  
16 to try to stop it, but I would really ask, let's get  
17 past the rhetoric that you can't believe this or that,  
18 that there's the untold millions out there, and then  
19 suddenly you come up with this \$50 million for the  
20 entire country for just one business.

21 That's absolutely obnoxious to me to have that  
22 said here, and I have to then try to defend it. There's  
23 no way for me to get at that. Take the numbers and use  
24 them and say what it is, but don't explode them like  
25 that, and don't take and tarnish an industry with that

1 broad brush.

2 Thank you.

3 (Applause.)

4 MS. HARRINGTON-MCBRIDE: Now, may be a good time  
5 to actually get to some balance point here, Jerry, and I  
6 appreciate your comments and your candor. As you know  
7 we hold these forums so that we can have an opportunity  
8 to sit down with all sides around the table, and I think  
9 that it is probably something of a small miracle that  
10 there are not more moments of tension.

11 And I think that when they occur, we want to  
12 acknowledge your frustration, and I think that we want  
13 to go forward with this in the most productive way. I  
14 think as some of you have already identified, this is a  
15 particularly difficult issue.

16 I think that the difficulty is that we're not  
17 all on the same page about when what we're talking about  
18 and that there's a continuum of transactions, some of  
19 which are more or less likely to be harmful to consumers.

20 I, for example, have a similar experience to  
21 you, Jerry. I routinely purchase my contact lenses from  
22 a provider of contact lenses, and I use the phone to do  
23 it, and I have them retain my account information on  
24 file, and I have never had a problem with that  
25 circumstance. It even got footnoted in the NPRM as a

1 practice that we did not find particular obnoxious.

2 MR. HILE: Which wouldn't be banned by the  
3 proposal.

4 MR. CERASALE: That's correct.

5 MS. HARRINGTON-MCBRIDE: Right, and we're trying  
6 again to try to put all these points on the line so that  
7 we can see where the balance point is, and it's very  
8 helpful to hear the specific scenarios. I think what we  
9 really need to hear from both sides though is what's the  
10 tipping point. Where can we creep in on the middle?

11 We don't want to inconvenience consumers who  
12 prefer to have their account numbers retained by  
13 individual sellers. I think we're much more going into  
14 a place where we're going to get into trouble where  
15 there are two sellers, and there's a transfer of  
16 information because I think it may be difficult for the  
17 consumer to understand. Reactions to that? Linda?

18 MS. GOLDSTEIN: If I can just jump in a minute  
19 because I do hope we can start to get to the process of  
20 honing this in, but I would like to express a caution.

21 I think if you try to approach this by finely  
22 differentiating and segmenting different kinds of  
23 transactions, we're going to be heading down a path of  
24 disaster for two reasons. I don't think we're going to  
25 find appropriate justifications necessarily to separate

1 finely segmented kinds of transactions, and I don't  
2 think sitting here today you can possibly anticipate all  
3 the kinds of ways in which marketers might engage in  
4 these types of arrangements.

5           Sitting in the original rulemaking in 1995, the  
6 word up-sell didn't exist, and preacquired account  
7 information didn't exist. I actually think our  
8 comments, we've given you a bright line distinction.  
9 We've said that it if there is a transfer of consumer  
10 information without knowledge of and prior to the  
11 consumers' consent, which would encompass for example  
12 your scenario where a list is compiled and a marketer  
13 sell its list with its credit card numbers to another  
14 marketer without telling the consumers on that list that  
15 they sold the list of account numbers, I think everyone  
16 at this table would agree with you that that is a  
17 violation.

18           We've said in our comments that we would agree  
19 to a ban on that. Legitimate marketers don't do that.  
20 They don't sell consumer credit card numbers for money.

21           Once you go beyond that, I mean let's talk about  
22 the inbound up-sell or the situation I think Tyler  
23 described. You call your airline to order airline  
24 tickets, and they offer you the opportunity to rent a  
25 car, and they tell you it will be charged on the same

1 account.

2 Intuitively we all feel good about that. Now,  
3 if we substitute a membership club in there, you may  
4 have a different visceral reaction, but the process is  
5 the same. You can't make differentiations based on  
6 whether you like the product or you don't like the  
7 products that's being sold.

8 I think what we're saying is the distinction is,  
9 was there a prior notice and consent to the consumer.  
10 If there isn't, it's not appropriate, and if there is,  
11 it's an appropriate method of doing business.

12 MS. HARRINGTON-MCBRIDE: Elliott?

13 MR. BERG: Two things. I would like to say,  
14 first of all, that there is a way of distinguishing  
15 between the two kinds of transactions that Linda was  
16 talking about. The travel agent scenario when you're  
17 discussing a package or a bundle of services, airfare, a  
18 rental car, a hotel in connection with a trip can easily  
19 be considered pursuant to a transaction, to use the  
20 language of the proposed rule, and therefore would not  
21 implicate the ban on sharing information.

22 MS. GOLDSTEIN: Even if there are different  
23 sellers?

24 MR. BERG: I'm not talking about different  
25 sellers. I'm talking about you call or are called by

1 somebody who is offering a package of goods and services  
2 that are in connection with a trip.

3 MS. GOLDSTEIN: That's not covered by the rule.

4 MR. BERG: I understand that, that's what I'm  
5 saying. It's not covered by the rule now, and it's easy  
6 to describe that kind of scenario and say we don't want  
7 to make it a requirement for people to pull their credit  
8 card out for the airfare, then for the car rental and  
9 then for the hotel when they're dealing with the same  
10 person.

11 If you're switched to somebody else, another  
12 telemarketer, or you're bumped over to somebody for a  
13 travel membership club, that's different, and it is  
14 clearly within the ability and the authority of the  
15 Commission in commentary to a final rule to explain  
16 those differences and to give examples.

17 The seller retention example is also not a  
18 problem, will also not fall within the rule as proposed,  
19 and so I think it's important as these scenarios are  
20 described as potential pitfalls to immediately identify  
21 the ones that are not problematic because they don't  
22 fall within the rule.

23 The second thing I would like to address is the  
24 issue of mandated disclosures, and I would like to with  
25 respect express profound concern on the part of the

1 States at the possibility, if it is a possibility, that  
2 we might end up moving from the present proposal to a  
3 mandated disclosure regime.

4 For one thing, mandated disclosure once again  
5 runs counter to those consumer expectations that we  
6 talked about earlier, so it's not the providing your  
7 credit card number or writing a check and therefore is  
8 really in opposition to the messages that we've provided  
9 to consumers over the years.

10 Secondly, it's very, very hard to police.  
11 Telemarketers depart all the time from scripts, and  
12 there's one particular case involving a for profit  
13 fund-raiser where the FTC had I think it was a  
14 voluntary assurance of discontinuance or similar  
15 document requiring tape-recording of all calls, every  
16 part of every call, the initial call and the  
17 verification call.

18 We later had a lawsuit against that company, and  
19 in the course of discovery got ahold of the digital  
20 tapes of tens of thousands of calls, and there was a  
21 very high percentage -- for one of the campaigns I think  
22 it was in excess of 80 or 90 percent of the calls were  
23 out of sync in a material way with the written scripts  
24 in a way that misled consumers.

25 Thirdly, a mandated disclosure requirement is

1 not going to address the problem of sharing this kind of  
2 sensitive information with bad telemarketers, so leaving  
3 aside the telemarketers that industry representatives  
4 here quite understandably are describing as the norm,  
5 there are still many telemarketers out there, cross  
6 border and otherwise, who are not going to follow the  
7 Telemarketer Sales Rule.

8           They don't care what it says. They're willing  
9 to change their shape and disappear and recreate  
10 themselves in some other form, and they're not going to  
11 be hiring legal counsel to make sure that they complied  
12 with the law.

13           This preacquired account information system is  
14 directed at sharers of information as well, providers of  
15 information, and so it gets to part of the problem of  
16 list sharing that States have been concerned about  
17 historically.

18           Last of all, there's the cost issue, and I  
19 honestly don't understand how a mandated disclosure  
20 requirement, which presumably would necessitate spending  
21 the better part of a minute or half a minute on the  
22 phone reciting pieces of information mandated by a rule,  
23 would be more cost effective than asking the consumer to  
24 state his or her credit card number.

25           That's all we're talking about. I mean, on a

1 certain level, this is complex, but on another level  
2 it's really very simple. It's just a matter of saying  
3 to people, If you want to make a purchase, give us your  
4 credit card number and then we will know that you have  
5 consented.

6 MS. HARRINGTON-MCBRIDE: Prentiss.

7 MR. COX: I would like to speak to the tape  
8 verification issue as a compromise and also the  
9 continuum and the charge backs. I'll try to do it real  
10 briefly. I've already made my points.

11 The nub of the problem is this: When the  
12 marketer controls both the norm methods, specifics of  
13 the disclosure and controls the shorthand method of  
14 consent, you'll never be able to design a system where  
15 that's going to work and be a fair process.

16 It's an abusive telemarketer, inherently abusive  
17 situation because of that nexus of controlling both the  
18 disclosure and controlling the shorthand method of  
19 consent. Tape verification would be a step backwards,  
20 do nothing rather than adopt tape verification. That is  
21 essentially the status quo now.

22 You can see -- I've thought of this in a million  
23 ways. You simply can't write a verbatim requirement of  
24 a disclosure that will work in the vast array of  
25 situations. I think we can probably all at the table

1 agree on that. You can't do it in a way that works.

2 Choose a method, whether it's a written consent  
3 or a creative and effective proposal we have before us.  
4 Choose a bright line. The second issue is the  
5 continuum. There is a way to break up these that makes  
6 sense, and the FTC has done it. We have the seller  
7 retention situation, and that isn't within the rule.

8 We have the outbound calls and the inbound  
9 transfers, and there's very little in the industry  
10 comments that really go to that. They focus on all the  
11 scenarios we talked about today other than the seller  
12 retention ideas, inbound internals, so you have those on  
13 one end. You have the seller retention on the other,  
14 and then you have the inbound internal, which I agree  
15 the FTC needs to work on the exception provision to  
16 clarify what a transaction means and what's in and out  
17 within that concept.

18 The last point on a continuum, even with seller  
19 retention, even with internal inbound, when it's  
20 combined with the free trial offer method of sell, you  
21 put one method of selling preacquired account that's  
22 inherently susceptible to abuse, and you take the free  
23 trial offer, another method of selling that's inherently  
24 susceptible to abuse, you put them on top of each other,  
25 and the difficulties multiply exponentially.

1           The cases we've had have substantially been  
2 involving the free trial offer situation, by the way,  
3 with legitimate sellers, a subsidiary of Fleet Boston,  
4 U.S. Bank Corp., et cetera. We're talking about major  
5 financial institutions in America have been the  
6 defendants who are involved in these cases.

7           When you use that method of selling, you get  
8 exactly what our cases have shown, so even when you  
9 break it all up, you should never allow preacquired  
10 account telemarketing in context with free trial offer.

11           Finally, on the charge backs, the third point.  
12 There's two problems with relying on the charge backs.  
13 The first and most important is when you get the  
14 statement from your credit card company, these sellers  
15 almost invariably put an 800 number on there, so you  
16 identify it. You call up the 800 number. They will try  
17 to resell the product to you.

18           They'll send you to a special department, a  
19 retention department. They'll try to resell you. If  
20 they can't resell you, they will voluntarily reverse the  
21 transaction. Doing so takes them out of the charge back  
22 rule. It's not counted by the systems, and that's how  
23 they get around it.

24           The second way is a substantial number of these  
25 sales occur in conjunction with financial institutions.

1 Every agreement I have seen, and I've seen quite a few  
2 between financial institutions and preacquired account  
3 telemarketers, the financial institution agrees that  
4 they won't use the charge back system.

5 What they will do is when they get a call,  
6 you've got a problem, you call up, you call your VISA  
7 issuer. The VISA issuer will transfer you over to the  
8 preacquired account center. They will not send you the  
9 charge back form and send you through the system. It  
10 keeps the numbers down.

11 MS. HARRINGTON-MCBRIDE: Reilly has a question.

12 MR. DOLAN: Several people have referred to the  
13 phrase seller retained, which I think George was the  
14 first to throw on the table, and I was seeking some  
15 clarification as to what everyone considers within the  
16 scope of seller retained information.

17 For instance, I think everyone would agree if I  
18 called L.L. Bean to order a pair of boots, and one week  
19 later I call and order a shirt, and they say, Well, do  
20 you want it on the same credit card, that is seller  
21 retained.

22 But is there a difference from that scenario  
23 where a third-party telemarketer, a telemarketing firm  
24 obtains the credit card information on behalf of one  
25 client and then does either inbound or outbound clients

1 for another client using the information that they may  
2 have retained from the consumer a week or two earlier.

3 I would like to get a little bit of  
4 clarification on how everyone is using these terms so we  
5 all know what page we're on.

6 MS. HARRINGTON-MCBRIDE: Is there a reaction to  
7 that? Mallory.

8 MR. DUNCAN: Just very briefly. I mean I'll  
9 repeat some of what I said before, and that is if L.L.  
10 Bean is issuing its own credit then it's retaining it  
11 in-house. If it's a private label card, then someone  
12 like GE Capital is issuing the card for them, and it  
13 would fall I would say within seller retained, but in  
14 fact GE Capital has to transfer it back to L.L. Bean in  
15 violation of the proposed rule for L.L. Bean to charge  
16 your account.

17 MR. DOLAN: But that is still with respect to  
18 L.L. Bean.

19 MR. DUNCAN: That's right.

20 MR. DOLAN: Your point is with respect to who  
21 issued the credit card, not who the actual seller was.

22 MR. DUNCAN: I was focusing my point of  
23 clarification more on third-party telemarketer calls on  
24 behalf of ABC Corp. gets the information, and then a  
25 week later is using that information for XYZ company.

1 MS. GOLDSTEIN: Reilly, we would not consider  
2 that seller retention. I mean, that's exactly the  
3 scenario that we're talking about that would be  
4 prohibited because when that third-party telemarketer  
5 retained that account information, it did so as an agent  
6 for the seller, so it was not that telemarketer's  
7 account information to begin with.

8 They were capturing that for the seller on whose  
9 behalf that call was made, so if that telemarketer were  
10 then to call a consumer without knowledge and prior  
11 consent and use that credit card information again, that  
12 would be the kind of a transfer prior to and without  
13 consumer consent that we're talking about.

14 MR. DOLAN: How is that distinguished from the  
15 scenario you threw out originally with respect to L.L.  
16 Bean calling and then a week later selling Timberland?

17 MS. GOLDSTEIN: Because in that scenario, the  
18 telemarketer did not have the credit card information  
19 when they made the call and to the question, I think it  
20 was Keith's question earlier about having the  
21 telemarketer read back the credit card, that's exactly  
22 the situation we're trying to avoid.

23 We're trying to not put the credit card number  
24 in the hands of the telemarketer so it's going between  
25 seller A and seller B. It's not going into the hands of

1 the telemarketer sales operator where the potential for  
2 abuse would exist.

3 I know I'm out of turn, but could I take a stab  
4 at running some of the continuums for you?

5 MS. HARRINGTON-MCBRIDE: Let's do this. There  
6 are a lot of people who have been waiting. Keep that on  
7 hold, and I think we will address it. Art?

8 MR. CONWAY: Art Conway, Dial America. That  
9 situation you just described where the telemarketer acted  
10 on behalf of one seller, acquires a credit card number.  
11 Yes, the telemarketer has that credit card in addition  
12 to the seller having it, and the telemarketer is going  
13 to have that because it's part of the record. Part of  
14 the record keeping would probably be required to keep  
15 all this data.

16 If the telemarketer were to go out on his own  
17 and make a deal with ABC companies and says, Hey, look,  
18 I have all these credit card numbers, let's go market  
19 your product and we can put it right on there. You  
20 don't want the telemarketer doing that, right? I don't  
21 think you do. We certainly don't want that.

22 That's the risk you run where you -- we of  
23 course would never do that, but that's the risk you run  
24 where now you're putting the credit card number not only  
25 in a seller's hands but in a telemarketer's hands and a

1 third-party's hands, and that credit card -- we like  
2 using preacquired because we don't want to have it come  
3 up in front of our sales rep.

4           Maybe some other kind of verification might  
5 work, but we don't like to put the whole credit card  
6 number in front of sales rep.

7           MS. HARRINGTON-MCBRIDE: Roger, I think you've  
8 been on Eileen's list since before she left, so let's go  
9 to you.

10           MR. KIRKPATRICK: Thanks. I wanted to address a  
11 point that both Susan and Elliott made about costs,  
12 arguing that what's the big deal about asking for the  
13 number again as opposed to the disclosures, aren't the  
14 disclosures going to take just as long.

15           It's not either or. It's neither and. The  
16 scenario that I described earlier that I'm concerned  
17 about where you have got an inbound call and the  
18 recipient of the call is selling their product and  
19 someone else's product, an up-sell, you're going to have  
20 to make the disclosures anyway.

21           The card is being -- the card charged billing  
22 information is being transferred to a third-party in  
23 that situation after the call is completed so you're  
24 going to have to make the disclosures. I'm not arguing  
25 that -- I would never argue that getting the number

1 again would mean that you don't have to make the  
2 disclosures because you still have to say what you're  
3 going to do with the number, which is to transfer it.

4 So asking for the number again is adding time to  
5 the call. It is an additional cost, but more important  
6 than that, the catalog clients that we deal with that  
7 are making these calls that are receiving these calls  
8 and selling our magazines on our behalf, they tell us  
9 that the cost would be loss of sales of the catalog  
10 products because the customers would just be so annoyed  
11 about having to give the credit card number again that  
12 they just gave.

13 MS. HARRINGTON-MCBRIDE: They're not annoyed  
14 about the up-sell. They're annoyed about giving their  
15 credit card information?

16 MR. KIRKPATRICK: They're not annoyed about the  
17 up-sell quite frankly. They try to make it as infinity  
18 as possible. I don't know about you, but when I call  
19 catalogs they're always asking me, Is there anything  
20 else you want, and people are used to saying no to that,  
21 and it happens in retail as well. Frankly they're not  
22 annoyed about the up-sell.

23 The other thing is it doesn't make sense to the  
24 customer to give your credit card number to the same  
25 person in the same conversation that you just gave it

1 to. I mean, I just don't see the logic of that. I  
2 don't see the consumer protection in there.

3 MS. HARRINGTON-MCBRIDE: Do you think there's a  
4 way it could be explained to consumers as a protection,  
5 because you've just bought something from the ABC  
6 catalog but now you're going to be buying Time Magazine,  
7 Time is a different seller so for your protection, I'm  
8 keeping separate records, and I would like to obtain  
9 your information again, or could you say to them, if  
10 you've already put it away, the account number I have is  
11 1 through 16 VISA expires on this date?

12 I recognize that the time difference doesn't  
13 save you anything, but in terms of the explanation to  
14 consumers, do you not think that there would be some way  
15 of educating them about your purposes?

16 MR. KIRKPATRICK: You know, I just don't see  
17 what that adds. Again, I know this is not everyone's  
18 scenario, but in my scenario, quite literally really I  
19 just gave a number, and it's not even five minutes ago  
20 in the same call.

21 Typically when you make a catalog sell, you tell  
22 them everything you want and you give your credit card  
23 number at the end, after telling them everything you  
24 want, and then comes the up-sell, so we're not talking  
25 five minutes ago, we're talking 30 seconds ago, if that,

1 and I just don't see what difference it makes from a  
2 consumer protection point of view.

3 I also want to address the point that  
4 disclosures won't work because no one will give them.  
5 Well, yeah, and you also said abandonment won't work  
6 because people wouldn't order them. Yes, you have to have  
7 enforcement obviously, but I don't think it's fair to  
8 argue that legitimate companies shouldn't be able to  
9 engage in legitimate practices because other people will  
10 abuse it.

11 MS. HARRINGTON: George, I know at one point you  
12 were actually tapping your tent up and down, and I  
13 wasn't able to call on you then, so now you're up.

14 MR. THOMAS: Thank you. Thank you. I wanted to  
15 address one thing, which I agree with Elliott, that at  
16 the core, this is a simple issue, and we at the table  
17 are making it somewhat more complicated, and to touch on  
18 your point, it involves common sense.

19 Common sense would tell you what the key  
20 ingredients are to express verifiable consent and that  
21 those ingredients need to be present regardless of  
22 inbound situations, seller retained information or  
23 third-party information.

24 The consumer really with adequate disclosure  
25 really won't care, if it's a company they've done

1 business with calling, you still have to identify, Hey,  
2 we're calling you from. Same issue on a transfer  
3 situation, we're calling you from, who, what, when,  
4 how. It's simple.

5 The rules should be uniform. It applies to all  
6 types of marketing, that is the so-called preacquired  
7 account information, and that is those disclosures are  
8 identical in every event. There's plenty of  
9 descriptions of what they should be, specific language  
10 as well as general implementation.

11 So if you pack it out and say, What does the  
12 consumer need and some of the comments that were in the  
13 footnotes of the proposed rule are indicative of that,  
14 which is who am I dealing with? Is it someone I've done  
15 business with? Great. Is it someone new? Great. Tell  
16 me who it is. Tell me when you are going to transfer.  
17 Tell me what card I'm going to get charged with  
18 sufficient specificity so I know and tell me when you're  
19 going to charge me, how much.

20 That's what you tell them, exclusive of free  
21 trial offers, exclusive of third-party transfers. Those  
22 are the crux of what needs to be done. It's relatively  
23 simple.

24 To address one quick question there on transfer  
25 of credit card leading to no charge backs, I've looked

1 at a few contracts in my day too, and I've never seen  
2 one by a financial institution that says, We will not  
3 transfer a complaint to the credit card issuer or the  
4 billing processor as a charge back.

5           Secondly, I think consumers again on a common  
6 sense basis, if they see an 800 number, they're going to  
7 call it, but consumers have been trained for many, many  
8 years, since credit cards have been issued, to simply  
9 call up the credit card insurer and say, You know what,  
10 I didn't order it.

11           In fact instructively I think consumers are told  
12 to deal with all problems in that way, including calling  
13 the merchant. Whether they remembered it or not, the  
14 easiest way to get a transaction annulled whether you  
15 did it or not and you have buyer's remorse is simply to  
16 say, I didn't authorize it.

17           Every consumer knows how to do that, so to say  
18 that charge backs simply don't work is an argument that  
19 doesn't fly. So that's it.

20           MS. HARRINGTON-MCBRIDE: Laura?

21           MS. POLACHECK: Thank you. Laura Polacheck,  
22 AARP. I think a part of the frustration of this  
23 conversation as well might be that there are some  
24 examples being used when we're talking about a middle  
25 ground that aren't telemarketing, and it seems to be

1 lost that this is a Telemarketing Sales Rules.

2 The example of calling your travel agent, you  
3 fly repeatedly. That's not telemarketing. You're  
4 calling your travel agent to get an airline ticket. I  
5 don't see where the telemarketing there is look.

6 MR. CERASALE: It's up-sell.

7 MS. POLACHECK: If you're choosing to call and  
8 get an airline ticket, that's not a telemarketing sales  
9 call. For example, repeatedly calling the travel agent  
10 because you travel quite often and they retain your  
11 information, that's not a telemarketing sales call.

12 I'm not talking about the up-sell portion. I'm  
13 talking about the fact that you have a travel agent that  
14 you routinely use. They retain account information.  
15 You call them to book a flight. That's not a  
16 telemarketing sales call.

17 MS. HARRINGTON-MCBRIDE: Because of the common  
18 carrier exemption or because of your relationship with  
19 the travel agent?

20 MS. GOLDSTEIN: They're not telemarketing you to  
21 fly. You're making you the call to them. They're  
22 not --

23 MR. THOMAS: It's an up-sell.

24 (Discussion off the record.)

25 MR. PROCHNOW: An example I used, I received an

1 Email or a direct mail piece that has a sweepstakes  
2 component to it, and the inbound call becomes a  
3 telemarketing call under the rule, and I get that every  
4 single week. I get one every single week.

5 MS. POLACHECK: I think a lot of the examples  
6 frankly used were not of a planned telemarketing  
7 campaign which is the definition of when this rule is  
8 even triggered, but is of a consumer voluntarily  
9 choosing to do business with an organization and buying  
10 something.

11 That's simply not part of what this rule is  
12 covering. When the consumer calls a business that  
13 they've done business with and they have the account  
14 information, that's not a telemarketing sales call.  
15 It's not the airline, the travel agent having a list and  
16 calling consumers.

17 MS. HARRINGTON-MCBRIDE: If we're talking about  
18 non telemarketing examples, we need to keep in mind that  
19 this is the Telemarketing Sales Rule, but I hesitate to  
20 spend many more of our precious five remaining minutes  
21 debating that point. Prentiss. Laura, finish up, and  
22 we'll go to Prentiss.

23 MS. POLACHECK: An example is being used that  
24 preacquired account information is necessary because  
25 telemarketers might improperly use the information, so

1 that is a consumer protection, and I think that that is  
2 an interesting example because it implies that the  
3 telemarketers being hired by the sellers are potentially  
4 fraudulent.

5 I can't see a seller or a business hiring people  
6 and being concerned that they have such low scruples  
7 they might fraudulently use account information. I  
8 think this obviously is a liability issue at some point,  
9 but I can't see that that can be the major concern, and  
10 that's why preacquired account information is used.

11 MS. HARRINGTON: I'm just catching up. I had to  
12 take a short meeting on the telephone and excuse myself,  
13 so I understand, Jerry, while I was gone, you were being  
14 picked on.

15 MR. CERASALE: No, I wasn't. I wasn't being  
16 picked on. I picked on everybody else is what happened.

17 MS. HARRINGTON: Well, I promise you I'll never  
18 leave the room again. Katie, why don't you pick it up.  
19 I'm sorry, I was just getting up to speed by note over  
20 here. Who's up. Prentiss?

21 MR. COX: A real quick response on the charge  
22 back to what George said. The agreements do not say you  
23 can never use the charge back provision, and I would  
24 like to hear from the financial institutions on this.

25 What they do say is when you call us we will

1 refer -- when a consumer calls saying there's an  
2 unauthorized charge on my card, we will send that call  
3 to you, preacquired account telemarketer seller. We  
4 will not send the consumer where we would send them if  
5 they called upon anything else, and that's an unusual  
6 situation.

7           It drastically reduces the number of charge  
8 backs, and that's an important point, and I will also  
9 say in terms of Jerry was very civil. He was  
10 frustrated. And he's frustrated for the same reason I  
11 am. He's frustrated I think because he thinks that the  
12 telemarketers are always getting bashed, and I'm  
13 frustrated because you pull 50 consumers in here, and  
14 there ain't no doubt that they're not going to have a  
15 problem.

16           This is a simple clear problem to normal folk.

17           MS. HARRINGTON: Without having heard the  
18 discussion, one of the things that's very difficult and  
19 has been always has been difficult is we've worked to  
20 develop the right policy and the right balance on each  
21 of these issues, is that many of us at the table come  
22 from a law enforcement perspective, and we see the  
23 damage that practices can cause.

24           Some of you come from a business perspective and  
25 don't see what we see, and we have different filters and

1 lenses and concerns, and we don't necessarily come from  
2 the same place, and we don't necessarily agree that the  
3 priorities ought to be the same, and it can be very  
4 frustrating to look at the same practices from those  
5 different perspectives.

6 MS. HARRINGTON-MCBRIDE: George, do you want to  
7 respond to Prentiss' point? Does this clarification  
8 about what he was talking about cause you to want to  
9 comment?

10 MR. THOMAS: The financial institutions can talk  
11 about it. I don't know if that exists or not. I know  
12 specifically that the provision -- a provision that  
13 would say we'll never send it to a merchant processing  
14 issuer I know for a fact does not, but there are banks  
15 here that can address that.

16 MS. HARRINGTON-MCBRIDE: Susan?

17 MS. GRANT: I just want to go back to Linda's  
18 example with L.L. Bean and Timberland, and that is that  
19 I don't see how we're supposed to believe that L.L. Bean  
20 would trust Timberland to tell it truthfully that the  
21 consumer in fact agreed to the purchase in order for  
22 L.L. Bean to give then give Timberland the rest of the  
23 information necessary or to help it process the  
24 transaction.

25 We're supposed to think that L.L. Bean doesn't

1 trust Timberland enough to let Timberland take the  
2 consumers' credit card or bank contract information  
3 directly from the consumer. I just don't follow the  
4 argument at all.

5 I don't really think that this is about  
6 protecting consumer privacy or convenience, and I think  
7 that it's really too dangerous a practice to allow it to  
8 go on without a ban.

9 MS. HARRINGTON-MCBRIDE: Rita?

10 MS. COHEN: I guess an example was given  
11 earlier, and I sort of let it slide, it was sort of  
12 presented in a negative way, but when you were kind of  
13 talking about the things that made you feel comfortable,  
14 I wanted to come back to it and to a little bit of what  
15 Roger said.

16 I think it is perfectly comfortable for  
17 consumers if they have bought something and they're  
18 offered another product from the same seller, and they  
19 say, Can I use the same credit card, you just gave it to  
20 me.

21 I think they also do feel comfortable if they  
22 have bought, and the example we gave in our comments was  
23 some fitness equipment and then they're offered a  
24 fitness magazine, that they are perfectly comfortable  
25 with that arrangement. They understand that they just

1 gave the credit card and that they're comfortable with  
2 allowing the second marketer to use that credit card.

3 So I think it's really common sense. It's not a  
4 retention issue in that case, but it was presented as a  
5 pretty negative kind of selling technique.

6 MS. HARRINGTON-MCBRIDE: Do you think it makes a  
7 difference if there's a free trial involved?

8 MS. COHEN: We certainly said in our comments  
9 that if there was a free trial, there should be  
10 additional disclosures in the ERA advance consent  
11 guidelines and our Q&A that we issued to our members, we  
12 talked about additional disclosures, making sure that  
13 they understood what the consumer was agreeing to, that  
14 if they did not cancel, they would then be issued the  
15 subscription, and they would be charged so I do think  
16 additional disclosures are needed, but I don't think it  
17 makes it an uncomfortable situation.

18 The only other thing I wanted to say because I  
19 think there was a lot of talk about charge backs and  
20 somewhat of a little negative implication that it was a  
21 way around, that consumer refunds and customer  
22 satisfaction was a way around charge backs, but in  
23 fairness we really want our consumers and our customers  
24 to enjoy the relationship with us.

25 So a good refund policy and customer

1 satisfaction guarantee are important concepts for us.  
2 It's not a means to some avoidance.

3 MS. HARRINGTON-MCBRIDE: We'll keep going down  
4 right down the table. I think you two will have the  
5 last word. Linda and then Roger.

6 MS. GOLDSTEIN: Thank you. I just wanted to  
7 address a few points that have come up. First to  
8 Susan's point, and this has been said a number of times,  
9 I don't think the focus of this issue can be on how are  
10 we going to take any potential for fraud or abuse out of  
11 the hands of telemarketers?

12 What's really troubling me about this discussion  
13 is an underlying assumption that the majority of  
14 telemarketers and sellers are going to do bad things  
15 with this information. The vast majority of legitimate  
16 marketers, and we've given you numerous examples of  
17 legitimate marketers that engage in these marketing  
18 techniques, will do the right thing.

19 The bad telemarketers, whether you put on  
20 disclosures and verification or you put on a ban,  
21 they'll go take the account numbers anyway because  
22 they're bad telemarketers, so we can't write the rule  
23 from the vantage point of the bad telemarketer. We do  
24 have to write the rule from the vantage point of a  
25 balance that will give you something clear in the rule

1 that will allow you to enforce the rule.

2 I would suggest that having mandated disclosures  
3 and notice and consent requirements will do that. The  
4 bad telemarketers will not comply with those  
5 requirements any more than they would with a ban.

6 I also wanted to address Elliott's point that  
7 the disclosures would not be sufficient because people  
8 don't stick to the script, and you would have no way of  
9 ensuring that the disclosures were in fact made.

10 That's why we added the verification component  
11 and said that you either have to have tape verification  
12 or written confirmation prior to billing or third-party  
13 independent verification or a written signature. Any  
14 one of those methods would provide you for a vehicle for  
15 ensuring that the disclosures were in fact made to the  
16 consumer prior to being billed.

17 I did also want to mention the free trial which  
18 has come up a number of times here. In ERA's comments  
19 as well, we acknowledge a willingness to explore with  
20 the Commission additional disclosures that might be  
21 appropriate in the case of free trials, but I think it  
22 would be a mistake to link these two issues together.

23 They have often come up in the same marketing  
24 programs, but they're very different issues, and free  
25 trials, risk free trials exist in a lot of mediums. This

1 is a Telemarketing Sales Rule, and free trials are not  
2 really a telemarketing issue. They exist in print.  
3 They exist in direct mail. They exist on television and  
4 on radio, and whatever the standards are, they should  
5 really be consistent along all channels.

6 Finally, we're not going to have the time I know  
7 at this juncture to get into any more discussion of the  
8 various ways in which these campaigns occur, but I think  
9 one thing that's come through very clearly from this  
10 discussion is that there are a lot of variations, and  
11 there are a lot of nuances, and there seems to be a lot  
12 of misunderstanding on both sides about what it is we're  
13 really talking about.

14 I would just urge further discussion following  
15 this workshop. I think before we decide what to do, we  
16 have to be really clear on what it is we're regulating,  
17 and I'm not quite sure we've achieved that in this  
18 discussion.

19 MS. HARRINGTON-MCBRIDE: Roger?

20 MR. KIRKPATRICK: In spite of what Linda just  
21 said about not talking about free trials, forgive me,  
22 but I would like to add that I think that it is  
23 appropriate in a situation where we send out letters or  
24 postcards or maybe a color rep on the magazine. The  
25 point is that somebody would always get a written

1 acknowledgment of the order prior to billing.

2 That acknowledgment restates the entire terms of  
3 the offer, so if there is a free trial component to the  
4 offer, it also restates those terms. It includes an 800  
5 number that the person can call if they to cancel it,  
6 and the timing of that acknowledgment is such that if  
7 they call that 800 number within a reasonable time, the  
8 charge will not ever appear on their card. I think  
9 that's fairly good verifiable authorization.

10 The only other thing I wanted to add was just in  
11 response to what Eileen said about the perspectives. I  
12 think you're right. I would just flip that around also  
13 that I think the people who spend their time by  
14 necessity dealing with the negative fallout from various  
15 marketing activities don't see the positive fallout that  
16 the people on the business side see in terms of benefits  
17 to consumers.

18 MS. HARRINGTON: Well, I really get the last  
19 word. I would just say that we have been asking  
20 throughout this rule review at every opportunity for  
21 justification for the practice of preacquired account  
22 telemarketing, whether we've defined it as precisely as  
23 some might like or not.

24 One of the reasons that the Commission has  
25 proposed a prohibition is because it looked very

1 carefully at the record of the request for justification  
2 for the practice and found it is sorely wanting. Why  
3 this needs to happen, in other words, has been a real  
4 mystery to us, why it is that companies should be  
5 permitted to get account information from third parties  
6 and have it at the time that they call a perspective  
7 customer, charge that account information and oftentimes  
8 not obtain consent for that.

9           Why that should happen is a question that we've  
10 been asking, and we've been asking for a very specific  
11 justification for it.

12           I believe that in the comment period we've seen  
13 more response than previously, but this is not a new  
14 question from us I would just note.

15           Now, we are going to have a break, and then  
16 we're going to come back at three o'clock to pick up our  
17 discussion on up-selling and cross-selling

18           (Break in the proceedings.)

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1 PANEL ON UP-SELLING AND CROSS-SELLING:  
2 GEORGE WALLACE, American Financial Services Association  
3 STRATIS PRIDGEON, ARTA  
4 LAURA POLACHECK, AARP  
5 TYLER PROCHNOW, ATA  
6 ARTHUR CONWAY, Dial America  
7 JERRY CERASALE, DMA  
8 LINDA GOLDSTEIN, ERA  
9 RITA COHEN, MPA  
10 ELLIOTT BERG, NAAG  
11 PRENTISS COX, Minnesota AG  
12 SUSAN GRANT, National Consumers League  
13 MALLORY DUNCAN, National Retail Federation  
14 DAVID MUSSMAN, CONSUMER CHOICE COALITION  
15 CHAR PAGAR, PMA  
16 ROGER KIRKPATRICK, Time, Inc.  
17  
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1 MS. HARRINGTON: We're on to up-selling and  
2 cross-selling. I'm looking around the table to see if  
3 we have any new participants. David's back. You're  
4 going to have to introduce yourself again. Is anyone  
5 else I can't see down past Carole?

6 We have a new participant, Jerry Cerasale, from  
7 the Direct Marketing Association. We're happy you are  
8 back, Jerry. I'm sorry and Stratis Pridgeon is back from  
9 ARDA.

10 Okay. Do you have everyone reporter then, all  
11 of our participants? I don't think that we need to do  
12 introductions. All right.

13 Up-selling and cross-selling. Here's a question  
14 that I know none of you have anything to say about: Is  
15 the proposed definition of outbound call overly broad?

16 Jerry, I was going to call on you whether your  
17 tent was up or not.

18 MR. CERASALE: All right. I think Katie  
19 answered the question yesterday. Our view is it was  
20 overly broad especially in the context of it became an  
21 outbound call, and then you would apply if you had it a  
22 do-not-call list, the time of day and so forth, which  
23 were very difficult so we said yes.

24 I think that the staff has basically clarified  
25 that point already. The thought was it was not their

1 intent, and kind of looking to see if the disclosures  
2 were made. At least that's the understanding we have,  
3 and if I am wrong, which I often am, let me know.

4 MS. HARRINGTON-MCBRIDE: No, and in fact you've  
5 appropriately I think expanded my clarification of  
6 yesterday, which I think only pertained to do-not-call,  
7 to suggest that the calling time provision and the  
8 provision about threats and intimidation were not  
9 intended to apply in this circumstance.

10 It is designed conceptually framework wise to  
11 think about the up-seller cross-sell call as a separate  
12 and new transaction and one which requires certain  
13 disclosures, and we had not meant for those unintended  
14 consequences to come into play.

15 MS. HARRINGTON: And conceptually what we are  
16 concerned about is that the consumer understand that  
17 they're dealing with a different seller and that there's  
18 a new transaction underway. Elliott?

19 MR. BERG: One point on outbound, and then if I  
20 could have permission to go back to billing information  
21 for just a second. It was the second question in the  
22 last section of the forum and for some reason we didn't  
23 get to it, slowly moving along here.

24 With respect to the initial call, the initial  
25 call part of an outbound, NAAG commented that if that

1 initial inbound call is for some reason other than what  
2 would be considered a solicitation, for example, a  
3 servicing call but then results in an up-sell, that  
4 that's a situation that should be covered by outbound  
5 call as well and we think there are lots of cases where  
6 that occurs.

7           With respect to billing information, it may be  
8 implicit in the Commission's comments, but we wanted to  
9 urge that there be some explicit clarification that  
10 billing information includes encrypted numbers. I think  
11 that was everybody's assumption in the earlier  
12 conversation, but I think it's really important in light  
13 of GLB that there be a really clear statement on that.

14           MS. HARRINGTON: Linda?

15           MS. GOLDSTEIN: Thank you. Just a few  
16 comments. We appreciate the clarification that the  
17 do-not-call provisions and the time of day and other  
18 practices would not apply, but we still believe that the  
19 more appropriate way to handle this situation would not  
20 be to treat it as a quote, unquote, outbound call.

21           We acknowledge that certain disclosures,  
22 particularly the fact that it's a separate seller, if  
23 that is in fact the case and that it's a separate sales  
24 transaction, need to be disclosed, but if you simply  
25 carve out the do-not-call and the time of day, you would

1 still be left with a situation where the up-sell would  
2 be subject to the disclosures as they're written for  
3 outbound calls, and some of those wouldn't really make  
4 sense.

5 For example, if the consumer is calling in, it  
6 doesn't really make sense in the middle of the call for  
7 the operator to have to say, Oh, hello, Ms. Jones, my  
8 name is blah blah blah, which is what you would  
9 technically be required to do if you treat it as an  
10 outbound call.

11 So we think the Commission's concern, which is  
12 that certain information be disclosed to the consumer,  
13 is an appropriate concern but that there should be  
14 specific disclosures that are uniquely targeted to this  
15 kind of a call.

16 MS. HARRINGTON: So you agree in concept, but  
17 have some concern about execution, is that what you're  
18 saying?

19 MS. GOLDSTEIN: Correct. And also we had  
20 requested just some clarification in our comments as to  
21 the -- I hate to go here again but the definition of  
22 up-sell, without getting into up-sell versus cross-sell,  
23 but using your terms, internal up-sell and external  
24 up-sell if in fact there's a second product or service  
25 being offered by the same seller, we would assume that

1 it wouldn't be subject to any of these new requirements.

2 Obviously there is no issue with there being a  
3 separate seller, and we think that should be clarified  
4 in the final rule.

5 MS. HARRINGTON: Rita?

6 MS. COHEN: I agree with Linda. It wasn't clear  
7 to me what you were saying in terms of that you didn't  
8 mean it to be subject because there was a definition of  
9 outbound calls, so I'm assuming you're going to create a  
10 new definition for this situation for an up-sell because  
11 what we had proposed, we thought that the closest model  
12 was the internal up-sell.

13 Then if you then applied it to the external  
14 up-sell, we said that there were four things that were  
15 important to tell them, that they're dealing with a  
16 separate seller, the identity of that seller, that the  
17 purpose of the up-sell was to solicit the sales of  
18 additional goods and services and then the material  
19 terms and conditions of the sales offer.

20 So we felt that with those disclosures, you  
21 certainly had given the consumer the information that  
22 they needed, and then they could consent to the sale.

23 MS. HARRINGTON: Char?

24 MS. PAGAR: I just wanted also to add something  
25 to what Linda said about the issue of a separate

1 seller. We do think that there should be another look  
2 at the definition of what a separate seller is. We  
3 would encourage the Commission to define separate seller  
4 to not include affiliates, and as for a model as to how  
5 to approach this, I would suggest looking at the TCPA,  
6 which is based on the consumer perception standard as to  
7 whether companies would be considered affiliates or not.

8 MS. HARRINGTON: David?

9 MR. MUSSMAN: I would like to hear your thoughts  
10 on -- what initially when you drafted the propose rule  
11 what your thoughts on a second seller was because it is  
12 significant, especially if we end up requiring the  
13 gathering of that billing information twice.

14 I think if you look at Chairman Miller's study,  
15 I think he determined there was something like 14  
16 billion inbound calls, and I think 40 percent of those  
17 have an up-sell on them of some type, and that's about  
18 5.6 billion, and I can tell you as one member of that  
19 Coalition, it's pretty hard to get that information in  
20 less than a minute, very hard, even if they already have  
21 it.

22 I don't think there's very many sub 50 cent  
23 minutes out there in the marketplace, usually between 50  
24 and 85 cents. If you just use the 50 you're looking at  
25 almost \$3 billion a year to address whatever the issue

1 or problem is.

2 So that's a lot of money, and I think we ought  
3 to think about what your thoughts are so maybe we can  
4 help you and comment on what you think a second seller  
5 was.

6 Let me give you some examples. On an inbound  
7 call off of Direct TV, at three in the morning, you're  
8 trying to order Marvin Gay, and then they order -- and  
9 then they might up-sell you another product. It's  
10 billed by still let's say Time Life, but they get the  
11 product from -- you're actually shipped from another  
12 seller.

13 Well, is that a second seller or is only a  
14 second seller after the second sellers has your bill,  
15 bills your credit card? Those are just some examples.

16 MS. HARRINGTON: Let me just say that I think  
17 it's not appropriate at this point for us to say what  
18 we're thinking, if what you mean is to say that there's  
19 a need for -- is that you think that the notice of  
20 proposed rulemaking doesn't sufficiently discuss that  
21 and options, that that's a criticism that we'll note for  
22 the record.

23 MR. MUSSMAN: I'm not trying to criticize you.  
24 I just want to know so we can get the dialogue on your  
25 thoughts based on maybe the comments you've read. Couch

1 it however you want to.

2 MS. HARRINGTON: Well, the workshop is part of a  
3 notice and comment rulemaking procedure, and the  
4 Commission has put out its thoughts in the form of the  
5 proposed rule along with the notice.

6 If it's not clear to you or you think that  
7 there's a need for more discussion on the part of the  
8 Commission, that's something we'll note in the record.  
9 If you have thoughts about how these different  
10 circumstances arise and should be treated, you're  
11 certainly welcome to supplement your comments with more  
12 on that and we would be happy to take that into account.

13 It's the Commission itself that has issued this  
14 rule and statement, and we can clarify on the point that  
15 Jerry raised because we know absolutely for certain that  
16 that is not what the Commission intended by the meaning  
17 of outbound call, but you're asking something different  
18 that we really can't comment on, wouldn't be appropriate  
19 for us to discuss our thoughts on that here.

20 MR. MUSSMAN: My comment then would be, wherever  
21 we end up, we talk about, well, it will only add a few  
22 seconds. A few seconds is very, very expensive, and  
23 that ends up in hundreds of millions of dollars by  
24 adding seconds on.

25 Just so you know how programs work, it's just

1 like any other product, the cost as it was in the  
2 outbound case, the same thing happens with the inbound  
3 case. When the number of calls generates too few of  
4 dollars run the advertisement again, the program stops,  
5 and up-sells fund the original product.

6 Those products, as we talked about earlier, on  
7 the teleco side are available in other areas. Generally  
8 you see the' ad for long distance in maybe five  
9 different mediums.

10 In the certain areas of what we will call the  
11 DRTV market, direct response T.V. market, those products  
12 aren't available. When that product no longer can  
13 generate enough money through the up-sell portion where  
14 they're actually selling advertising on the back of  
15 their call or the product itself, then that product  
16 is gone from the consumer.

17 MS. HARRINGTON: Susan?

18 MS. GRANT: We believe affiliates have to be  
19 treated as second sellers. They may be selling totally  
20 different products with different terms and conditions.  
21 Consumers don't have any way of knowing what is an  
22 affiliate of that company and what isn't, and ultimately  
23 it doesn't really matter to them because they need the  
24 same basic disclosures about who they're dealing with,  
25 what they're buying and the terms and conditions,

1 whether it's entirely an different seller or an affiliate  
2 of the original one.

3 MS. HARRINGTON-MCBRIDE: Tyler?

4 MR. PROCHNOW: Just to that point, I would argue  
5 that there is a distinction between an affiliate and a  
6 separate seller. Whether you're dealing with the exact  
7 same seller, not an affiliate, XYZ company sells you one  
8 product. They go to sell you a second product. It may  
9 be different terms and conditions. It may be wholly  
10 unrelated to the initial product that was sold, but you  
11 still know what that company is. You still know who it  
12 is that you're doing business with, and in that  
13 scenario, it's not covered by this new definition.

14 So I think in the affiliate it goes again to  
15 common sense. If the consumer understands that this is  
16 an affiliated company, it's someone they know or trust  
17 that maybe they have or maybe they haven't done business  
18 with in the past, but somebody that they're aware of who  
19 the call is from, as long as it's along those lines,  
20 that should be excluded as well.

21 MS. HARRINGTON-MCBRIDE: I have a question, not  
22 seeing any tents up. Some of the comments suggested  
23 that there may be additional costs for compliance  
24 because inbound call centers are not set up to handle  
25 disclosures and any verifications. For example, if you

1 traditionally run an inbound center and do not have to  
2 comply with more of the components of the rule, then you  
3 do not have taping equipment available for example for  
4 verification.

5           It sounds like Linda may have addressed that in  
6 the last session, but so we have it on the record for  
7 this particular session, would anyone like to speak to  
8 that? Linda?

9           MS. GOLDSTEIN: I guess I'm a little confused  
10 because of this particular section on how we're going to  
11 treat an up-sell. I did not have an understanding that there  
12 would be necessarily a requirement of a tape recording.

13           We are suggesting that if in conjunction with  
14 the up-sell there is a transfer of account information,  
15 then we may have a tape-recording or we've also proposed  
16 a written confirmation prior to billing, so I guess I'm  
17 not understanding.

18           MS. HARRINGTON-MCBRIDE: Some of the comments  
19 addressed this in the context, I think the statement  
20 we made in the notice, that if the initial call would  
21 be, for example, exempt from the Rule's coverage, but our  
22 definition applying the outbound and calling that a  
23 separate transaction would require that second  
24 transaction to be subject to the disclosure requirements  
25 of the rule, then everything in the rule would be

1 applicable to that second transaction, and that the  
2 sellers who traditionally have taken the inbound calls  
3 to sell their products, if they're then combining forces  
4 with people and turning around and having a second  
5 transaction appended to that first may have costs  
6 associated with that if this definition goes through.

7 I guess we wanted to tap into that.

8 MS. GOLDSTEIN: I guess probably what you're  
9 referring to is I guess what you're talking about is if  
10 you're going to have a single inbound sale, you wouldn't  
11 necessarily set that up to be tape recorded at the  
12 outset, particularly because you don't know if the  
13 consumer is even going to accept that product or  
14 service, and if they don't accept that product or  
15 service and don't provide billing information, at that  
16 point the up-sell may never occur.

17 So the additional costs, there would be  
18 additional costs, and we do know from members that some  
19 of the technology would have to be adjusted to either  
20 allow the taping to start in the middle of the call or  
21 in some cases they would actually have to start taping  
22 the entire call, at the beginning of the entire  
23 inbound call itself, which would be a substantial cost  
24 because now you're taking the entire universe of the  
25 call.

1           You don't know even with the initial sale if the  
2 consumer is going to accept, and you certainly don't  
3 know if you're going to be going on at that point to an  
4 up-sell, so there's some waste involved in that you're  
5 going to be taking some calls that would never result in  
6 the up-sell at all.

7           MS. HARRINGTON-MCBRIDE: Reilly?

8           MR. DOLAN: Linda, could you explain why you say  
9 on an inbound call, where a consumer is calling the  
10 company presumably already with an interest to make the  
11 purchase, that they don't know that that sale could be  
12 consummated?

13           I can see that argument a little more made in  
14 outbound cold calls where telemarketers, they probably  
15 hit one out of 15 or 20 calls, but an inbound call, it's  
16 already been prescreened. The people calling are indeed  
17 interested in that product or service.

18           MS. GOLDSTEIN: Yeah, they are interested, but  
19 then to some extent it depends on what ensues during the  
20 course of that call and what the nature of the  
21 advertisement was that precipitated that call. It may  
22 have been a teaser ad that simply invited you to call  
23 for information and more of the information or details  
24 are disclosed during the course of that call, and the  
25 consumer may decide at that point whether to purchase or

1 not.

2 I don't know the number. Dave may be in a  
3 better position. I know for certain that there's not  
4 anything near 100 percent conversion rate hunting down  
5 calls.

6 MR. MUSSMAN: There are not. It varies on  
7 program as you can imagine. And Linda's right, it  
8 depends on the media, and it depends on the product.  
9 The more expensive products have lower conversion rates  
10 because a lot of people call in and ask about that  
11 product and want to know about it before they purchase  
12 it and learn more about it, so those obviously have  
13 lower conversion rates.

14 Something that's a less expensive product, and  
15 it's pretty easy to understand, has higher conversion  
16 rates. No program has 100 percent conversion rate.

17 MS. HARRINGTON-MCBRIDE: Mallory?

18 MS. DUNCAN: Katie, my card had gone up just as  
19 you were saying no one else has any questions on the  
20 last issue you were discussing with affiliates, so if we  
21 can go back to that just for a second.

22 MS. HARRINGTON-MCBRIDE: My apologies.

23 MR. DUNCAN: I'm going to preface this by  
24 expressing it's not a process complaint but a concern  
25 that in revising the rule, it's important that we look

1 at the effect of the rule as a whole, and I understand  
2 that for purpose of honing in on certain issues, we were  
3 doing a question by question format, but we have to  
4 recognize that those questions have consequences  
5 elsewhere in the rule, and perhaps there will be a time  
6 later where we can talk about the broader issue.

7 On the question of affiliates, I wanted to  
8 follow up on Char's comment about looking at what the  
9 FCC has done. There in terms of defining affiliates,  
10 the FCC said companies could define affiliates from what  
11 they believed was the consumer's expectation as to how  
12 they would be perceived.

13 Then they put it in a very interesting trade-off  
14 that went with that, and what they said was that for  
15 purposes of the established business relationship,  
16 however you defined your affiliates is how you would be  
17 defined for the established business relationship, but  
18 the corollary of that was if someone decided to  
19 institute the company's specific do-not-call provision,  
20 then that same definition applied.

21 So if a company broadly defined who their  
22 affiliates were, then by definition, when they  
23 suppressed, everybody was suppressed, and that was a  
24 very interesting and useful trade-off, and I think that  
25 we shouldn't overlook using something like that in

1 defining affiliates here.

2 It also goes to the broader issue of soliciting  
3 that we better look at this holistically rather than  
4 that specific issue.

5 MS. HARRINGTON-MCBRIDE: I've been handed a note  
6 by the court reporter, and I need to ask the gentlemen  
7 up in the audio video booth to try to keep the noise  
8 down a little bit. The noise is distracting. If you  
9 think about the gigantic task of trying to take down the  
10 very rapidly spoken words of 30 of us around the table,  
11 we've already expressed our frustration, and she has  
12 not. Let's give her the courtesy of a quiet room.

13 Laura?

14 MS. POLACHEK: Yes. I think using consumer  
15 perspective standard is very subjective, and I think the  
16 fact that a company calls you and has affiliates is not  
17 necessarily understood by the consumer. They know who  
18 they're dealing with. They get the name at the  
19 beginning of the call. And it's a vague notion for a  
20 lot of consumers that there's an umbrella of related  
21 organizations with several affiliates.

22 So to use an overly subjective standard to  
23 define who is related and who is not I think would not  
24 serve the interest of the consumer.

25 MS. HARRINGTON-MCBRIDE: Tyler?

1           MR. PROCHNOW:  Katie, to your question, I want  
2 to discuss a little bit about costs.  Not only did Linda  
3 state very well what the costs associated with the  
4 technology developments that might be involved if this  
5 definition about telemarketer or telephone call is  
6 adopted, but there's also some other significant costs  
7 that would go in, too.

8           It would be training of people who are used to  
9 taking inbound calls that now have to worry about the  
10 disclosures that are necessary on the outbound side.  
11 That would take people off the phones and give them a  
12 brand new mind set and training that goes with it.

13           there's also an additional compliance with  
14 do-not-call.  You would have to create a new do-not-call  
15 compliance program and regime, and depending upon how  
16 this is written, how it plays out and how it's  
17 interpreted, there's also the potential that you would  
18 have to create do-not-call policies as mandated by the  
19 TCPA and other things that are available on demand which  
20 would now be an additional cost.

21           I think you can ask any of the businesses around  
22 the table the cost of dealing with that policy on  
23 demand, while maybe not significant in terms of their  
24 time, certainly are significant in terms of their time  
25 and some of their frustration level that they're faced

1 with these days.

2 MS. HARRINGTON-MCBRIDE: You mean the provision  
3 in the TCPA that requires a telemarketer to produce  
4 their written policy?

5 MR. PROCHNOW: A written policy on demand, yes.

6 MS. HARRINGTON-MCBRIDE: I'm not sure anything  
7 we do here today is going to change that.

8 MR. PROCHNOW: Well, if you define outbound  
9 telephone call to include a cross-selling and an  
10 up-seller, it's conceivable that the FCC would follow  
11 suit, I think, and that would create a similar  
12 situation.

13 MS. HARRINGTON-MCBRIDE: Art?

14 MR. CONWAY: I want to go back to when we're  
15 talking about the taping and why you wouldn't  
16 necessarily tape an inbound call when it comes in  
17 because you don't know if it's going to result in a  
18 sale. Are we really talking about -- we don't have to  
19 tape the inbound of that sell anyway.

20 The only taping you're talking about, if I  
21 understand this correctly, maybe I don't, is when it  
22 gets down to expressed verifiable authorization. You've  
23 got to tape that part where it's an oral authorization.  
24 You don't have to tape the whole cross-sell up-sell  
25 presentation. It's when the consumer says yes, and now

1 you have to obtain express, I'll have to read this,  
2 verifiable authorization, that's where the taping  
3 element comes in.

4 I'm not saying that the inbound probably  
5 normally -- you don't have any taping requirements so  
6 you would have to build that in to do that taping.

7 MS. HARRINGTON-MCBRIDE: This leads me to want  
8 to ask an additional question, so I'll put this on the  
9 table, so any of you whose tents are already up feel  
10 free to respond to this and any previously asked  
11 questions.

12 The comment certainty noted that the burden, if  
13 this provision were adopted, would be great. It would  
14 result in additional time spent. It would reduce  
15 perhaps the acceptance rate, and it could end up costing  
16 more money.

17 If calls are in fact calls that would be covered  
18 by the rule, if they were placed as outbound calls, are  
19 appended to transactions that are exempt from the rule,  
20 what would be the rationale for exempting them as well?

21 So I think just to go to the issue of part of  
22 this discussion relates to the coverage of transactions  
23 which are right now not covered by the rule because they  
24 are part of as an example an inbound call in response to  
25 direct mail that made sufficient disclosures and then a

1 sale on behalf of a separate seller takes place in the  
2 context of that call.

3 Why should that second transaction not be  
4 covered by the rule? What inequities would result?

5 MR. DOLAN: Reilly Dolan. I would like to add a  
6 question to that if Katie doesn't mind.

7 MS. HARRINGTON-MCBRIDE: Not a bit.

8 MR. DOLAN: In talking about the costs that  
9 would be incurred by the additional disclosures  
10 necessary if the up-sell was defined as an outbound  
11 call, it may also help to kind of describe what costs  
12 are incurred if those two different calls are actually  
13 completely separate calls as opposed to one call in  
14 which two different sales are taking place so that we  
15 have an idea kind of where on the spectrum these burdens  
16 really lie.

17 MS. HARRINGTON-MCBRIDE: Rita?

18 MS. COHEN: I guess I was going back to the  
19 taping thing.

20 MR. CERASALE: Can't hear you.

21 MS. COHEN: Sorry. Going back to the taping and  
22 the cost of taping and I think a comment might have been  
23 mentioned that talked about the added burden to do this  
24 for inbound calls.

25 If you have a traditional inbound call which is

1 in response to say a catalog, it wouldn't even be  
2 covered, so they would not certainly be set up to do the  
3 taping.

4 If we now add the up-sell situation and they do  
5 have to tape, the cost could be quite staggering for the  
6 organizations, and what we were trying to suggest was  
7 that it was too high a burden and that they would have  
8 to abandon totally doing the up-sells because we found  
9 for a large call center costs of \$6 million, even for a  
10 smaller size was \$75,000.

11 So we really felt that taping was not  
12 necessarily realistic, so our idea of express verifiable  
13 consent, we talked about three options which included  
14 the written acknowledgment.

15 MS. HARRINGTON-MCBRIDE: Linda, I'll call on  
16 you, but I want to specifically ask you: It's been  
17 almost two hours, and I've just now had my fix of coffee  
18 so maybe I've forgotten. Did you not say in the last  
19 session that taping of inbound calls was becoming much  
20 more prevalent?

21 MS. GOLDSTEIN: Taping of inbound up-sells is  
22 becoming much more prevalent, but for the proper context  
23 of the comments that we're referring to, those comments  
24 remain in the context of preacquired account  
25 information. I'm getting a little concerned that we're

1 getting a little confused here.

2           Again I want to reiterate that it is possible  
3 that an inbound up-sell could occur without any  
4 involvement of preacquired account information. In that  
5 scenario, we do not believe that any taping should be  
6 required at all.

7           The comments about the cost and expense of tape  
8 verification were made in the context of proposals that  
9 were made to the Commission as to what should be  
10 permitted for express verifiable authorization, and what  
11 we were trying to point out to the Commission was that  
12 while we recognize that you might prefer taping to a  
13 written confirmation, for example, for many  
14 telemarketers, particularly smaller call centers who are  
15 not geared to do taping on inbound calls, it would be  
16 impossible for them to do taping of inbound up-sells.

17           So there's got to be another method of express  
18 authorization that's permissible, and that's why we  
19 recommended that the Commission retain written  
20 confirmation prior to billing as an alternate form of  
21 verification.

22           MS. HARRINGTON-MCBRIDE: Karen?

23           MS. LEONARD: Not to put too fine a point on  
24 this, but I'm intrigued by the fact that you have  
25 suggested that EVA. We do currently have three options,

1 I think at least three options for EVA for novel payment  
2 methods under the current rule, so we're not talking  
3 about necessitating taping equipment to treat an up-sell  
4 as an outbound call if this were to be enacted.

5 I'm also intrigued that you're suggesting EVA in  
6 the context of preacquired telemarketing, recognizing  
7 that there are these three different options, but then  
8 suggesting it's not a possibility in this context, and I  
9 think it goes back to Katie's question, which is: What  
10 is the reason why these calls should not be treated  
11 similarly to a typical outbound call simply because  
12 maybe the initial contact was one that might be exempt  
13 not.

14 MS. HARRINGTON-MCBRIDE: Use your mike, Linda.

15 MS. GOLDSTEIN: I'm very confused because  
16 there's no requirement that outbound calls be taped.

17 MS. HARRINGTON-MCBRIDE: I think we may be  
18 mixing our provisions here. What this provision, this  
19 up-selling and cross-selling provision, is intended to  
20 address is the instance where marketers combine forces,  
21 and two different sellers are using either a single  
22 telemarketer or two different telemarketers to transact  
23 business within the context of either one or two calls  
24 depending on if you characterize the transfer call as a  
25 separate call.

1           And regardless of taping requirements that would  
2     come into play if there's a sale made and express  
3     verifiable authorization is necessary. What we're  
4     talking about is the initial disclosures that would  
5     allow a consumer to understand that it's a separate  
6     seller, what that seller's identity is, which I think  
7     this is a point of commonality, that it's a call to  
8     induce the purchase of goods and services, and any other  
9     material disclosures that are required right now by  
10    310-4-D.

11           So that's really what we're talking about. In  
12    addition to that, though, the Commission has proposed to  
13    treat this up-sell, this external up-sell meaning  
14    disunity of sellers, that there are two sellers on  
15    board, whether it's a single telemarketer or two, has  
16    proposed to treat that second part of the transaction as  
17    an entirely separate transaction which would not  
18    piggyback on any exemptions that the first call might.

19           So what we're saying is you can have inbound  
20    call centers, which traditionally may not have to tape  
21    calls because of the nature of their business. If  
22    they're now subject to a requirement that where they're  
23    up-selling, those calls are considered to be outbound  
24    and they're subject to all the provisions of the rule,  
25    what are the burdens, and also why is it not appropriate

1 to treat those as separate calls?

2 I think that's the question about costs I think  
3 that Reilly was getting at. Linda?

4 MS. GOLDSTEIN: I think we set this out in our  
5 comments, but let me reiterate it. We think separating  
6 out preacquired account information as a separate issue,  
7 if we are only dealing with the issue of up-sells and  
8 the concern that was expressed that prompted the  
9 proposal was that consumers don't understand that  
10 they're dealing with a separate seller.

11 Our feeling is that the most targeted and  
12 appropriate way to address that issue is to specify  
13 specific disclosure requirements, and we conceded in our  
14 comments that those disclosure requirements would be  
15 required on all up-sells irrespective of the initial  
16 call to which they're being appended.

17 The additional costs we referred to, if you were  
18 to treat this as an outbound call, two of which you  
19 addressed, exposing it to the do-not-call provisions,  
20 exposing it to the time of day which basically would be  
21 a functional ban, it would also be exposed to the record  
22 keeping requirements which would be an additional cost.

23 We were just concerned that if the Commission's  
24 goal here was to make sure that consumers understand  
25 that they're dealing with a separate seller and it's a

1 separate sales transaction, the neater, less complex  
2 approach is to simply develop disclosures that would  
3 communicate that information to consumers rather than  
4 altering the definition which could result in lots of  
5 unintended consequences, some of which we pointed out in  
6 our comments.

7 MS. HARRINGTON-MCBRIDE: Reilly.

8 MR. DOLAN: Since caffeine also is just kicking  
9 in, you're suggesting an alternative approach that would  
10 require additional definitions for up-selling and  
11 cross-selling and create an additional provision that  
12 would lay out what disclosures were required in that  
13 context separate from the rest of the rule.

14 MS. GOLDSTEIN: I don't think we're requiring a  
15 different definition because if you propose that  
16 up-selling be treated as an outbound call, you still  
17 have to define what you mean as up-selling. The only  
18 difference would be rather than subsuming it within the  
19 definition of an outbound call, we would treat it as a  
20 separate entity, which is what we think it most  
21 appropriately is because we also don't think that all of  
22 the disclosure requirements that are set forth in the  
23 rule for outbound calls really fit in an inbound  
24 up-sell.

25 As an example, it wouldn't make sense in the

1 middle of an up-sell to pretend that you're starting the  
2 conversation all over again by, Hello, Ms. Jones. They  
3 already know who they're speaking to. We want to make  
4 sure they now know that a separate sale is about to  
5 occur, but the quote, unquote, prompt disclosures that  
6 have to be made under the outbound disclosures  
7 requirements would seem awkward quite frankly.

8 MS. HARRINGTON-MCBRIDE: They don't require  
9 disclosure of the telemarketer identity, they require  
10 the identity of the seller be disclosed, so it may not  
11 be as awkward.

12 You don't have to say, This is Dial America on  
13 behalf of. You just have to say, I've been marketing on  
14 behalf of X and now Y seller would like to know if you  
15 would like to buy this product I think for  
16 clarification. Roger?

17 MR. KIRKPATRICK: I think a lot of the confusion  
18 here is arising from trying to plunk up-sells into  
19 either the inbound or outbound buckets, and whichever  
20 bucket you put it in, you then have to write exceptions  
21 and modifications because it doesn't fit exactly in that  
22 bucket, and I think you saw that by creating a third  
23 bucket for up-sells.

24 You may have to do some cut and pasting, and the  
25 rule becomes more words than it might otherwise be, but

1 you take the provisions and disclosures that are  
2 appropriate from the outbound situation that apply to an  
3 up-sell and put them in the section on up-sell. It  
4 seems to me that that provides the clearest rule and the  
5 best way to express to people.

6 On the taping issue, I just want to add that  
7 while it's true that large telemarketing vendors who  
8 contract with clients both in inbound and outbound  
9 situations, more and more are taping for inbound as well  
10 as for outbound. Small operations who use smaller  
11 vendors or who do it themselves, small catalog  
12 companies, just aren't set up to do the taping.

13 I don't mean to overstate this. They usually  
14 have some kind of limited taping equipment for random  
15 monitoring purposes and things like that, but they just  
16 don't have the equipment to be taping every call.

17 That's why I think it's important, and I hate to  
18 get back to the previous session, but when we are  
19 talking about taping in the context of a transfer that  
20 it be as an alternative to a confirmation.

21 MS. HARRINGTON: Let me just check something.  
22 It seems to me that we have very broad consensus that  
23 there is an issue here with up-selling in terms of the  
24 sellers -- there's consensus that the seller must  
25 disclose material information in an up-sell and that

1 that information includes the identity of the seller,  
2 the fact that this is a new transaction, whether it's  
3 treated as an outbound call or not.

4 Is there anyone at the table who differs with  
5 the proposition that there's an information need in the  
6 up-sell situation? Okay. I'm just testing that. Hold  
7 on a minute.

8 We're going to move to a different question  
9 here.

10 MR. PROCHNOW: I would like to respond to that.

11 MS. HARRINGTON: You disagree?

12 MR. PROCHNOW: No, no, I just want to make sure  
13 there's a clarification that when we're talking about  
14 up-sell, we're talking about a different seller, not the  
15 same seller.

16 MS. HARRINGTON: Katie, do you have a different  
17 question?

18 MS. HARRINGTON-MCBRIDE: I do. It's one that I  
19 think we've touched on, but I'm not sure that I could  
20 say that I could do the wrap up that Eileen has on this  
21 point, and so I want to be sure that we get this fully  
22 vetted.

23 Is our proposal to consider a subsequent  
24 solicitation call a separate transaction burdensome?  
25 Are there benefits right now that industry believes it

1 derives from piggybacking those calls?

2 For example, it seems to me that in instances  
3 where the initial call is exempt from the rule, if the  
4 subsequent call, the up-sell, takes that exemption, that  
5 it would be something that industry might want to  
6 respond to if those exemptions would no longer be there  
7 because this would be considered a separate transaction  
8 which would not any longer have that.

9 MS. HARRINGTON: Let me go back to the Lands End  
10 Timberland example for example, so that the first call  
11 which is the inbound call to Lands End to order  
12 something from the catalog, not subject to the rule,  
13 leads to an up-sell of boots by Timberland. That's  
14 precisely the kind of situation that we're talking about  
15 for clarity now. Who wants to --

16 MR. MUSSMAN: With the same operator or  
17 different operator?

18 MS. HARRINGTON: Same operator. Well, Roger,  
19 raise your tent.

20 MR. KIRKPATRICK: Nobody else's tent was up.

21 MS. HARRINGTON: Roger has an answer.

22 MR. KIRKPATRICK: Yeah. The up-sell portion  
23 needs to come under the rule.

24 MS. HARRINGTON: Thank you. Does anyone  
25 disagree with Roger?

1 MR. KIRKPATRICK: If it's a separate seller. If  
2 it's Lands End selling the Lands End product, then not.

3 MS. HARRINGTON: This is Lands End selling boots  
4 for Timberland. This is the sales representative  
5 selling boots for Timberland to the Lands End customer?

6 MR. KIRKPATRICK: Selling them for Timberland.  
7 Obviously you're not talking about a situation where  
8 Lands End, the catalog, as part of its catalog has  
9 Timberland boots and L.L. Bean's or whoever.

10 MS. HARRINGTON: Or L.L. Beans. I'm from  
11 Wisconsin. Does anyone disagree with that? I'm only  
12 interested in disagreement here. How could you  
13 disagree? If you don't disagree, I'm not going to call  
14 on you again.

15 MS. GOLDSTEIN: It's a clarification. When you  
16 say subject to the rule, we want to be sure what you  
17 mean. The only provision of the rule, what we're  
18 proposing is that a new provision be created that would  
19 apply to these calls, and obviously therefore the  
20 up-sell would become subject to that provision of the  
21 rule, but I get nervous when you say subject to the rule  
22 --

23 MS. HARRINGTON: Now, the question is: Is it a  
24 new transaction triggering the 310-4 disclosures?

25 MS. GOLDSTEIN: No. What we're saying is it's

1 a -- it's a different category of sale that will have  
2 its own separate set of disclosures.

3 MR. HILE: Similar but not necessarily  
4 identical.

5 MS. GOLDSTEIN: As appropriate.

6 MS. HARRINGTON-MCBRIDE: You didn't envision  
7 though the second seller's part of the transaction or  
8 the second sellers transaction which is appended to the  
9 initial call -- you don't envision that as being subject  
10 to the disclosure or misrepresentation provisions of the  
11 rules or to the record keeping provisions?

12 MS. GOLDSTEIN: We hadn't really thought about  
13 it. I think it would be difficult to say it shouldn't  
14 be subject to the misrepresentation sections. The  
15 record keeping, we have not discussed that so I would  
16 want to reserve comment on that and will provide you  
17 with a supplemental response.

18 MS. HARRINGTON-MCBRIDE: Rita?

19 MS. COHEN: I keep putting it up and down. I  
20 agree with Linda. I think that perhaps we need to think  
21 about beyond the disclosures. Certainly what we focused  
22 on was how can we make this clear to the consumer, and I  
23 think what the choice is always going to be in an  
24 up-sell situation, the initial seller has to decide that  
25 it is a valuable experience for them as well as a good

1 experience for the second seller.

2 So that's going to be a balance, and what we're  
3 trying to do is make sure the rule is not overly  
4 burdensome on that second sale so that you create a  
5 disincentive for a type of marketing that is very  
6 beneficial to consumers and to business, so we just want  
7 to strike the right balance.

8 MS. HARRINGTON-MCBRIDE: Keith has a question.

9 MR. ANDERSON: Yeah. I mean, I'm not sure it's  
10 a question or not, but it seems like to go back to sort  
11 of the taping discussion, the question might revolve  
12 around, if in the second transaction you use novel  
13 payment mechanism, are you required to have EVA, and I  
14 can't remember, I was going to look to see if that was  
15 in 310-4 or not, but that could become a crucial issue  
16 because if you have to have EVA, particularly if we  
17 narrow down what's acceptable, then they might have to  
18 have taping capabilities. Otherwise they wouldn't seem  
19 to need it if we do disclosures.

20 MS. COHEN: We wrestled with this because if  
21 there is a transfer, what we had proposed is you also  
22 had to do EVA, and we did try to stay close to the model  
23 that the Commission had used because we thought that  
24 that was an appropriate set of choices, but it was  
25 choices, so some will tape for sure, but we thought it

1 was too much to expect everyone to do it so that's why  
2 we wanted to retain the three choices.

3 MS. HARRINGTON-MCBRIDE: Laura?

4 MS. POLACHECK: Yes, thank you. I agree  
5 definitely with your proposal that once an inbound call  
6 is exempt and becomes an outbound call, it's going to be  
7 very difficult to treat that outbound call differently  
8 based on whether or not it came in voluntarily or it's  
9 just a pure outbound call.

10 I think the requirements frankly for an outbound  
11 call are relatively minimal, disclosing terms and  
12 conditions, et cetera, that it would not be burdensome,  
13 and I don't know that the consumers should have a  
14 different level of protection or disclosure based on  
15 whether or not they initiated the call or not.

16 The point is if it becomes a telemarketer sales  
17 call, then it should trigger the same disclosures.

18 MS. HARRINGTON-MCBRIDE: Prentiss.

19 MR. COX: Two quick points. One is there's a  
20 difference between a transfer call and an inbound  
21 internal again, and there's absolutely no reason to  
22 treat a transfer call as an outbound. I don't know if  
23 anyone in the industry would agree with that, but it's  
24 very clear in my mind.

25 The second is when you combine on the inbound,

1 when you combine the free trial offer and on the  
2 situation that we wrote in our comments regarding a  
3 consumer service call, when you combine that with the  
4 free trial service in many ways in my experience, and  
5 Elliott talked to that too, that's more difficult for  
6 the consumer because it increases the complexity of the  
7 transaction.

8           When you get an outbound call, there's a certain  
9 wariness that exists for consumers, but when you have  
10 an internal inbound call, you already completed a  
11 transaction. You're already into the discussion, and  
12 then they switch the discussion to a free trial offer.  
13 Even though you may have provided your account number,  
14 the complexity of the transaction is much greater, and  
15 so the problems exist and in some ways are worse with an  
16 inbound internal on a free trial.

17           MS. HARRINGTON-MCBRIDE: Elliott?

18           MR. BERG: I just wanted to suggest that it  
19 seems like the obligations that attend an up-sell in  
20 terms of both disclosure and EVA are just not that  
21 great. In looking at 310-4 D, we're not talking about  
22 restating the identity. This was your point Katie.  
23 We're not talking about restating the identity of the  
24 person on the phone but just the identity of the seller,  
25 and stating that the purpose of the call is to sell

1 goods or services and describing what those goods or  
2 services are.

3 I think almost any scenario that we could come  
4 up with, we would all agree that that basic set of  
5 minimum should be disclosed on the call.

6 As far as taping goes, now my understanding is  
7 that a taping or a written verification requirement  
8 would apply only in the case of a so called novel  
9 payment method, so in certainly a substantial percentage  
10 of the cases that Linda might be talking about, cases  
11 where you have perhaps smaller telemarketers, if they're  
12 using credit card mechanism that has FCBA protections,  
13 you don't have to worry about taping.

14 So I'm just concerned about the burdens being  
15 inflated here beyond what they actually are.

16 MS. HARRINGTON-MCBRIDE: Susan and then Roger.

17 MS. GRANT: I think I'm agreeing with Linda when  
18 I say that in the up-sells --

19 MS. HARRINGTON: Maybe we should have the court  
20 reporter pause for a moment and note this momentous  
21 event. I think this is the second time today that these  
22 moons have aligned.

23 MS. GRANT: But I'm not sure when I say that the  
24 misrepresentations and the deceptive practices  
25 requirements for outbound calls would all apply then to

1 the up-sells with the exception of the things that we've  
2 clearly agreed don't work, the time of day, the  
3 do-not-call and the other things that simply wouldn't  
4 fit.

5 MS. HARRINGTON-MCBRIDE: Roger?

6 MR. KIRKPATRICK: I just wanted to say that  
7 look, I don't think the business people really care  
8 ultimately whether you define up-sells as a separate  
9 category or as a subcategory under outbound calls where  
10 some things apply and some don't. It just seemed  
11 cleaner to us to set it up as a separate category,  
12 obviously including things like the prohibitions against  
13 deceptive practices and all the appropriate disclosures.

14 If you think you can do it by giving a list of  
15 what does apply and what doesn't apply or a separate  
16 category, the point is that it just seemed there was a  
17 lot of confusion being generated around the definition  
18 when it's really not the definition, it's the issue.

19 MS. HARRINGTON: I think we're going to end  
20 this. Jerry, I'm sorry, I didn't see your tent up.  
21 Everyone else whose tents are up has spoken on this.

22 MR. CERASALE: I might as well put my two cents  
23 in. I agree with Roger, and you've already done in the  
24 rule, in some of the exceptions you've -- except for the  
25 certain provisions, so you can make the statement and

1 apply things that are already there to it and not have  
2 to make a new list and just say for an up-sell this  
3 applies, this applies, this applies, these sections  
4 apply, something of that sort.

5 I think we're basically in agreement here and  
6 it's just a matter of dotting the Is and crossing the  
7 Ts.

8 MS. HARRINGTON: That's a nice note to end on.  
9 Before we go to the open microphone, let me make a  
10 couple of announcements. The entire public record for  
11 this rulemaking is going to close on Friday, June 28.  
12 This includes the submission of any supplemental  
13 information from participants.

14 It also includes comments to the user fee NPRM.  
15 Anyone else who's here and wants to make a submission  
16 before or by the 28th of June is invited to do so.

17 These supplemental filings -- and boy, let me  
18 just discourage you from rehashing what you've already  
19 said. There will be demerits, so if anyone thinks, I'm  
20 going to give it one more crack and I'm going to say all  
21 the same things that I've already said but I think I  
22 might be able to say them just a little differently,  
23 don't do that.

24 We're looking for supplemental new thoughts, new  
25 information, new suggestions and data, data, data. As

1 you know we're very interested in costs and benefits.  
2 And Katie needs to add one thing but I'm not done.

3 MS. HARRINGTON-MCBRIDE: As you all know we  
4 received over 43,000 public comments in this rulemaking,  
5 and I for one would like to retain my vision and my  
6 ability to see at least throughout my 40th, so really  
7 please don't reiterate. We really have plenty to read  
8 and we have read and really appreciated your very  
9 thoughtful comments.

10 So I can just tell you that multiple submissions  
11 on the same topic won't help.

12 MS. HARRINGTON: New, new and original, new and  
13 original. All right.

14 Now how should you submit, should you have any  
15 new and original thoughts? Send those to us, electronically,  
16 please. The best way to submit them is disk or the  
17 Email address that's behind you. Please don't submit  
18 them in written copy, please, please, please. That's  
19 the most difficult labor intensive format now.

20 If there's someone who really can only put their  
21 comment, additional submission -- it's not a comment, we  
22 don't want more comments, we want additional information  
23 if you need to put it in writing, if you absolutely need  
24 to put it in writing, you can do that, but it's going --  
25 it's much more difficult for us not only to put that

1 into a format that we can use but also to put it on the  
2 public record for you to be able to see.

3 The only way that we can get that in  
4 unfortunately is to scan it into a document that we  
5 can't index and neither can you, so that's that.

6 Rita, do you have a question?

7 MS. COHEN: I do have a question. I think we've  
8 we talked about a number of things both yesterday and  
9 today that imply that there could be some compromising--

10 MS. HARRINGTON: If you have new thoughts, put  
11 them in.

12 MS. COHEN: This was a question back to you, but  
13 I'm assuming if there are substantive changes from the  
14 initial proposal, that there would be another round of  
15 comments.

16 MS. HARRINGTON: Not necessarily and there's no  
17 requirement for that. This is notice and comment  
18 rulemaking, and I'm not going to answer any more  
19 questions about this. We're two days down. We have one  
20 day to go.

21 Jerry melted down earlier. I'm going to melt  
22 down right now if anybody asks any more questions.

23 MR. CERASALE: I have a question.

24 MS. HARRINGTON: Really?

25 MR. CERASALE: No, I don't.

1 (Laughter).

2 MS. HARRINGTON-MCBRIDE: I think Art has  
3 something he would like to say, and I just wanted to  
4 clarify. Any of your submissions that are in fact new  
5 comments on the user fee proposal should be sent to the  
6 address that's published in that NPRM. Please don't  
7 confuse the two things.

8 Additional submissions in this rulemaking, if  
9 you've already commented, should go to the address here,  
10 which is TSR Forum at FTC.GOV. That address will remain  
11 viable until the 28th, but please do sent your user fee  
12 submissions directly to that address, and Art.

13 MR. CONWAY: What I would like to do is answer  
14 the question or at least give you sort of my answer to  
15 the question you asked at the end of the last session.  
16 The question, Eileen --

17 MS. HARRINGTON: No, I don't want -- I don't  
18 think so right now. Okay?

19 MR. CONWAY: Okay.

20 MS. HARRINGTON: There are some mighty bad storms  
21 brewing outside, and I think we want to go to the open  
22 mike, and we want to see whether it's possible to let  
23 people go a little bit early because I think that rush  
24 hour could be a little difficult here today we are  
25 told.

1           Here's what we're going to do. We're going to  
2 stretch for five minutes because we need to find out who  
3 wants to participate in the open mike, and then we're  
4 going to resume sharply five minutes from now ten after  
5 four.

6           (Break in the proceedings.)

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1 OPEN MIKE SESSION.

2 MS. HARRINGTON-MCBRIDE: Okay. We're going to  
3 get started now with the open microphone portion.  
4 Excuse me, I know it was a long break, longer than we  
5 promised, but I think we all needed that extra time to  
6 kind of unwind a little bit, and now we're going to with  
7 the final portion of our program for today.

8 As you know, we always reserve time for the  
9 public who sits patiently and listens to us during the  
10 session to speak to the issues of the proposed rule, and  
11 we will begin today with Peter Blose, if he's in the  
12 audience.

13 MR. BLOSE: Thank you.

14 MS. HARRINGTON-MCBRIDE: Mr. Blose and everyone  
15 else that will be speaking, we can give you about five  
16 minutes a piece, and we'll try to give you the one  
17 minute warning.

18 MR. BLOSE: A thunderclap would be appropriate.

19 MS. HARRINGTON-MCBRIDE: If we get that warning,  
20 I'll be under the table.

21 MR. BLOSE: I know I'm competing with tired people  
22 and with thunder storms and rush hour traffic, and I'll  
23 try to be very, very brief. My name is Peter Blose.  
24 I'm here on behalf of the National Telephone  
25 Association, the NTA. The NTA is a new organization

1 whose sole purpose is to defend the rights of telephone  
2 owners. Our only goal is to virtually abolish  
3 telemarketing as we know it.

4 To most of the people assembled here today, I'm  
5 sure that sounds like a very radical idea, but most of  
6 the people speaking here today are employed by the  
7 telemarketing industry or the government. Very few are  
8 here representing the general public.

9 To the vast majority of the American public,  
10 however, abolishing telemarketing sounds like a great  
11 idea. The purpose of the NTA is to give voice to this  
12 majority view.

13 We support all of the proposed changes to the  
14 TSR with the specific exception of the safe harbor  
15 provisions. That issue is not on today's agenda, and I  
16 will not comment on it now, even though I would very  
17 much like to.

18 We also support a number of other issues which  
19 are beyond the scope of today's forum. Briefly, very  
20 briefly, these would include a private right of action,  
21 expansion of the Commission's budget for enforcement,  
22 expansion of the Commission's jurisdiction to cover  
23 banks and virtually all other forms of telemarketing,  
24 elimination of the exemption for business to business  
25 calls.

1           And I can't resist telling you that for lunch  
2 today, I went across the street to a small deli, a small  
3 business, and while there at the checkout counter, I  
4 told them what I was doing. I told them that I was  
5 across the street fighting the telemarketers. The  
6 person at the checkout counter responded immediately, I  
7 support what you're doing.

8           I then asked him if he ever got telemarketer  
9 calls at his place of business, and he went on at some  
10 length to inform me that he frequently got calls during  
11 the lunch hour when he had lines going out the door, and  
12 he was quite upset about it.

13           We also support the prohibition on dinner time  
14 calls, something that I don't believe has been  
15 discussed, and I'm not sure if it's in the record. We  
16 also support expansion of the do-not-call list or at  
17 least would oppose limitation of the do-not-call list  
18 regarding newspapers, insurance agencies, real estate  
19 agents, common carriers and nonprofit organizations.

20           I would like to take my remaining time to  
21 comment specifically on the Caller ID issue. The NTA's  
22 primary concern with the proposed changes to the TSR is  
23 enforcement. With the exception of Dial America, the  
24 telemarketing industry does not have a good record of  
25 self regulation in the consumer interest.

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1           Unless the TSR has adequate enforcement tools,  
2   the TSR will turn out to be yet another paper tiger.  
3   Caller ID is an essential enforcement tool for the  
4   Commission. Caller ID is the linchpin for the entire  
5   rule.

6           Without it, enforcement of the rule will be very  
7   difficult. Obviously if the consumer does not know who  
8   called, the consumer cannot make a complaint, and the  
9   Commission cannot pursue enforcement.

10           The question is: Should the Commission prohibit  
11   blocking of Caller ID or require transmission of Caller  
12   ID? The comments today from the representative of Dial  
13   America make very clear that transmission of Caller ID  
14   is technically feasible by one of several means, namely  
15   the Signal System 7, integrated service digital network,  
16   integrated access device or via long distance switching  
17   as explained by Dial America or other technical means  
18   which will soon be available.

19           Requiring Caller ID transmission from all  
20   telemarketers within two years is certainly reasonable.  
21   No commentator has given an adequate specific  
22   explanation as to why it may not. Therefore, the  
23   Commission should not wait for further study on this  
24   issue of Caller ID.

25           The study mandated by HR 90, which was referred

1 to earlier today, is unnecessary. Given the crucial  
2 importance of Caller ID, waiting for such a study is  
3 unreasonable. Caller ID is necessary to enforce the  
4 most important parts of the proposed changes to the TSR,  
5 including the do-not-call list, and a change in the  
6 abandoned call rate, as well as the existing company  
7 do-not-call list provision.

8 MS. HARRINGTON-MCBRIDE: Mr. Blose, one minute.

9 MR. BLOSE: Briefly I would like also like to  
10 mention, regarding the abandoned call rate, as a  
11 practical matter we consider all abandoned calls to be  
12 abusive per se. However, we believe the Commission  
13 should consider the size of the call center as it  
14 affects the ability of the call center to reduce its  
15 abandoned call rate.

16 Since predictive dialers work with algorithms,  
17 the number of representatives available for a call  
18 affects the ability of the call center to reduce its  
19 abandoned call rate while remaining productive. Of  
20 course, we support a zero abandonment rate having said  
21 that.

22 Finally, I just briefly would like to make  
23 mention or comment on the representative of the DMA who  
24 expressed some umbrage at being tarnished with the broad  
25 brush, as he said.

1           I believe this may be a good example of the fact  
2 that professional telemarketers just don't get it. The  
3 issue is not just deceptive telemarketing. The issue  
4 for most Americans is privacy.

5           Numerous surveys, the more than 40,000 public  
6 comments received by the FTC and the experience of  
7 numerous States, all indicate that the vast majority of  
8 Americans do not want telemarketers to call at all, at  
9 any time. As noted by the Commission, in 1999, Vermont  
10 survey found 88 percent of respondents wanted all  
11 telemarketing calls to stop.

12           FTC enforcement efforts should move beyond  
13 deceptive telemarketing practices to include protecting  
14 consumers' privacy. Consumer want to be protected from  
15 both bad telemarketers and the good telemarketers.

16           Thank you.

17           MS. HARRINGTON-MCBRIDE: Thank you.

18           (Applause.)

19           MS. HARRINGTON-MCBRIDE: Next we'll hear from  
20 Jason Catlett.

21           MR. CATLETT: Thank you. I'm delighted to  
22 follow the previous speaker because it might make me  
23 sound like a moderate.

24           I would like to comment on the issue of  
25 abandonment because I was not on the panel this morning,

1 but first I would like to thank the Commission for  
2 holding this workshop, particularly Chairman Muris who I  
3 think initiated the new look at telemarketing, one which  
4 is long overdue at the Commission, but even longer  
5 overdue at the Federal Communications Commission who is  
6 the missing party at this table.

7 Congress in 1991 asked for a national  
8 do-not-call list in the most specific terms and the FTC  
9 in a shameful act --

10 MS. HARRINGTON-MCBRIDE: FCC.

11 MR. CATLETT: I'm sorry, the FCC, in a shameful  
12 act of a captive agency capitulated to the company  
13 specific do-not-call lists, and it's unfortunate, it has  
14 followed to the FTC to catch up on what is in my opinion  
15 a inferior statutory basis, excluding many of the major  
16 telemarketers. I would also like to think Eileen who  
17 has done a superb job as the chair.

18 Now, turning to the abandoned calls, FTC has  
19 correctly construed these as per say violations of the  
20 TCPA and of their own statute, and the response of the  
21 industry and the DMA to this simply makes no logical  
22 sense.

23 Jerry has told us that the DMA disagrees with  
24 that finding but has given not a sketch of a plausible  
25 legal argument, and I'm certainly waiting for this, and

1 the DMA's position is just morally and logically  
2 indefensible.

3           The DMA claims that the abandonment rate should  
4 be set as close to zero as possible and no more than 5  
5 percent. Now, if you ask a five year old child the  
6 following question, Pick a number that's as close as  
7 possible to zero out of the following choices, zero,  
8 one, two, three, four, and five, the child will tell you  
9 that zero is the number that's as close as possible to  
10 zero.

11           Now, it's immorally indefensible because as I  
12 said yesterday, if a preacher instead of saying thou  
13 shalt not commit adultery says thou shalt have as close  
14 to zero adulterous relationships as possible and no more  
15 than 5 percent of your sexual activity, it makes zero  
16 sense.

17           So apparently the former chairman didn't enjoy  
18 that analogy, so let me try and pick an analogy that  
19 might be clearer. The coffee outside here does not  
20 belong to us, and if someone here said, Well, everybody  
21 should go and get their coffee there because it costs  
22 less than going to Starbucks in the corner, that's an  
23 economic efficiency, the kind of argument that we've  
24 heard today.

25           That ignores the fact that stealing other

1 people's coffee is illegal, and the economic arguments  
2 here are completely irrelevant.

3 We heard a lot of discussion this morning about  
4 what would be the cost of 2 percent abandonment rate or  
5 1 percent abandonment rate. 2 percent is illegal. 1  
6 percent is illegal. This discussion is irrelevant.

7 The only reason I think the FTC should be  
8 looking at figures for abandonment rates is with the  
9 purpose of suing those companies that purposefully set  
10 the abandonment rates high. The FTC's used to forcing  
11 criminals and law breakers to disgorge the money that  
12 they obtained illegally, and that's exactly what should  
13 be done in this case.

14 I suspect, however, that the class action  
15 lawyers will be the ones who will get the money out  
16 faster, but I see no reason why the FTC, given that it  
17 believes these calls are per se violative, should not  
18 immediately proceed to sue a couple of teleservices  
19 agencies.

20 MS. HARRINGTON-MCBRIDE: We're at the one minute  
21 mark, Jason.

22 MR. CATLETT: I'm nearly done, thank you. We've  
23 also heard today that clients set abandonment rates  
24 contractually, and to me this shows a plain, willful and  
25 knowing violation of the TCPA, which racks up the

1 liability from \$500 per call to \$1,500 per call, and I  
2 think it's comparable to the tobacco industry regulating  
3 the level of nicotine in cigarettes.

4 It shows that this is not some accidental thing  
5 that happens occasionally or some freak of nature. It  
6 is purposeful, law breaking, and it should be  
7 prosecuted. That's it. That's all.

8 MS. HARRINGTON-MCBRIDE: Thank you. We'll hear  
9 next from Richard Smith.

10 MR. SMITH: My name is Richard Smith, and I'm an  
11 Internet security consultant, but again today I'm coming  
12 here as a consumer, and I would like to talk about the  
13 two technologies that were discussed today, which is  
14 predictive dialers and Caller ID. I do think as many  
15 folks have already spoken today, they are two related  
16 issues but two very important issues.

17 On the issue of predictive dialers, my comment  
18 would be, if we came home and found that our ten year  
19 old son was calling up people on the phone, hanging up  
20 the phone and laughing, we would discipline him very  
21 likely. I think as his parents we would all do that.  
22 We would find this kind of behavior unacceptable.

23 I find it amazing that as adults that we have to  
24 argue about whether this is acceptable behavior or not  
25 because I don't think it is by any stretch of the

1 imagination.

2 But I would also like to echo Art's facts this  
3 morning on the issue of what's the realistic, what's the  
4 real world abandonment rate that's out there, and I  
5 discovered this on my own about three years ago when I  
6 retired from a software company and started working out  
7 of a home office.

8 What I discovered was I was getting a lot of  
9 these kind of calls during the day, and I assumed that  
10 first there was something wrong with the telephone  
11 network. Somebody would call me on the phone. I would  
12 get dead air, and I would start yelling in the phone,  
13 Please call me back, there's something -- I can't hear  
14 you. I was assuming we were seeing a flakey phone  
15 network.

16 I then through accident learned about this idea  
17 of predictive dialers and what was really going on, and  
18 I was horrified that people would be doing this to  
19 homeowners.

20 I didn't notice this until though that I had  
21 worked at home, and I think the problem is much higher  
22 during the day than at the evening. During the day  
23 there's much less people home, and I think the  
24 abandonment rates or no agent rates are much higher.  
25 And I think the real world rates are somewhere between

1 the 10 and 20 percent range. I think the idea of a 5  
2 percent rate is total fantasy.

3 The second issue that I would like to talk about  
4 of course is Caller ID, and I think it fits right into  
5 predictive dialers, that I think the companies get away  
6 with these high abandonment rates because they don't  
7 have to reveal who they are.

8 As someone who just learned about the per  
9 company do-not-call list, I think do-not-call lists on a  
10 company basis are fine, but nobody knows about them. I  
11 only learned about them because I started talking to  
12 lawyers, but I felt really bothered by the fact that I  
13 could not exercise that right when somebody called in  
14 and didn't provide their telephone number or their  
15 name.

16 Thank you very much.

17 MS. HARRINGTON-MCBRIDE: Thank you.

18 (Applause.)

19 MS. HARRINGTON-MCBRIDE: Dennis McGarry will  
20 speak next.

21 MR. MCGARRY: Yes. Dennis McGarry with Personal  
22 Legal Plans, a small business owner. I would just like  
23 to make a couple comments on the comments made  
24 previously here in open mike as well as others that are  
25 at the panel.

1           I would agree as a small business owner who I  
2 believe is running a business very ethically on some of  
3 the points that were made loud and clear, and that's  
4 enforcement.

5           I'm very much for, and I think any legitimate  
6 business in America wants enforcement, and that's where  
7 I really would like the government to focus its  
8 attention is enforcement of the laws that are already in  
9 place, and I believe if enforcement on the state level  
10 and the budgets there and the federal level would be  
11 applied to that, the consumer complaints would be  
12 narrowed significantly.

13           The second point I think we all agree to the  
14 points made earlier is education, and here's a gentleman  
15 who has been advocated in regards to he wasn't even  
16 aware, and I'm surprised, of specific do-not-call lists,  
17 and education is the second point, enforcement and  
18 education.

19           Now, to the points that I wanted to make as  
20 relates to yesterday's session that I felt were  
21 overlooked, and I'm surprised at that. An important  
22 point to be discussed that was brought out in a proposal  
23 by the Federal Trade Commission, and that's consumer  
24 choice.

25           I am for consumer choice, as well as the

1 consumer, as well as the small business owner, and I  
2 think this is important both to the consumer and  
3 business as well, and I think if the intent of the  
4 regulation is to provide consumer choice to receive  
5 calls, it shouldn't be just black and white, not a black  
6 building, a white building, a black car and a white  
7 car.

8           They need and they want and desire consumer  
9 choice, and they should be able to decide possibly a  
10 variety maybe by product line, interest in apparel  
11 products or whatever. Let them have that choice to  
12 choose the types of things that interest them.

13           Thank you.

14           MS. HARRINGTON-MCBRIDE: Thank you.

15           (Applause.)

16           MS. HARRINGTON-MCBRIDE: Next we'll hear from  
17 Reed Freeman.

18           MR. FREEMAN: Hi. I'm Reed Freeman from Collier  
19 Shannon Scott. I represent here Personal Legal Plans.  
20 I would like to talk about the issue of ANI. It seems  
21 to me in terms of signing up consumers for the list, the  
22 Commission has two choices.

23           You either let one person sign up the whole  
24 house or you let anybody from that household call in.  
25 If you let anybody call in, that person can either sign

1 up the whole house. That's problematic because you cut  
2 businesses off from communicating with people who have  
3 not asked not to be called, and you cut consumers off  
4 from choices that they have not said, I don't want.

5 If you let each person calling in be responsible  
6 for just himself or herself, you go into a total  
7 nightmare of a whole bunch of numbers that are either  
8 not blocked or partially blocked, that is blocked with  
9 respect to me but not my wife.

10 It seems to me that multiple sign ups is a path  
11 the Commission doesn't want to go down. That leaves  
12 single sign up. If there's going to be single sign up,  
13 then it should be by somebody who is authorized to do  
14 so. The only person, the only way we can tell who's  
15 authorized to do so is if it's the line subscriber.

16 If it's going to be the line subscriber, the  
17 Commission has acknowledged in the course of these  
18 hearings that accuracy, integrity of the list is  
19 important.

20 The Commission's also recognized, and it's been  
21 said a number of times, that the use of ANI technology  
22 is no means, not an appropriate means to determine if  
23 the person on the line is in fact the line subscriber.

24 So it seems to me you need to have one person  
25 sign up. It should be the line subscriber because

1 that's the only person you know has the authority, and  
2 if it's going to be the line subscriber, ANI technology  
3 is inappropriate.

4           The comment was made yesterday that it could be  
5 there's a distinction between using ANI to sign somebody  
6 up for a list on the one hand and taking the risk that  
7 it is wrong and using ANI to sign up people for purposes  
8 of billing, and then perhaps the distinction between  
9 those would allow ANI in the one instance and not in the  
10 other.

11           I would just like to say for the record, that  
12 doesn't make any sense to me. In each instance there is  
13 a potential for harm, monetary harm, if not other harm,  
14 if ANI is wrong. In the billing context, the consumers  
15 recognized innumerable times that the person -- that  
16 there's a misrepresentation in the bill if it's sent to  
17 somebody you owe money based on ANI when in fact the  
18 Commission's theory is they don't.

19           Likewise in signing somebody up for the list, if  
20 ANI technology is not reliable, what you end up with is  
21 a list that is bound to have, that we can all assume  
22 will have a number of invalid registrations, people who  
23 are not authorized to register.

24           What's the cost there? The cost there is  
25 obvious, and it was recognized by the Commission staff

1 yesterday. You've got business now unable to make  
2 calls, and inevitably from those calls some portion of  
3 revenue from those calls, and presumably the people buy  
4 bought willingly.

5           So it seems to me that the use of ANI technology  
6 to sign people up for the list is guaranteed to cause  
7 the very kind of harm that the Commission has said is  
8 inappropriate and is the basis for which ANI should not  
9 be used, and to allow it on the one hand, to sign people  
10 up and not on the other hand to bill people frankly  
11 strikes me as arbitrary and not appropriate.

12           There are a number of alternatives for sign ups  
13 to the national list that I think would give some  
14 comfort to the Commission and to the consumers that the  
15 right person signed up.

16           For example, where ANI technology is available,  
17 an acknowledgment could be sent to the line subscriber.  
18 How do you know it's the line subscriber? Because you  
19 have ANI technology. You send it to the person  
20 associated with that line.

21           That could be either something people send back  
22 and give their authorization to be on the list or it  
23 could have a PIN code that people could call in.

24           Additionally, if there were a fee involved, and  
25 there are a number of reasons why there should be a fee

1 involved, first of all telemarketers shouldn't have to  
2 bear all of the cost themselves. Consumers pay fees in  
3 many, many other instances that have been said on the  
4 record, but if there's a fee involved, we could use a  
5 credit card.

6 Why is a credit card a good idea? Because the  
7 Commission has already recognized in the pay-per-call  
8 rule, that the use of a credit card is a valid -- is an  
9 appropriate means of determining that the person who is  
10 asking to do something is in fact a person authorized  
11 for asking to do something.

12 In the pay-per-call context use of a credit card  
13 is presumed to be valid for someone to form a  
14 pre subscription agreement to make pay-per-call calls  
15 on 800 numbers.

16 There's no reason the use of a credit card in  
17 this context couldn't also give the Commission a reason  
18 to believe that the person who signed up is in fact the  
19 person who's authorized to sign it.

20 Thank you.

21 MS. HARRINGTON-MCBRIDE: Thank you.

22 (Applause.)

23 MS. HARRINGTON-MCBRIDE: Our last speaker at the  
24 open microphone time today will be Steve Brubaker.

25 MR. BRUBAKER: Hi. Steve Brubaker with

1 Infocision. First of all, let me say I'm proud to be a  
2 telemarketer. Regardless of what USAToday has printed,  
3 ours is a noble profession. We are trained  
4 professionals, and I would also add that my wife that  
5 has no problem being married to a telemarketer.

6 I'm also proud of the nearly 3,000 employees we  
7 have at Infocision. We use the term communicator  
8 because we communicate with our clients, donors and  
9 customers. We represent the nation's leading nonprofit  
10 organizations and Fortune 500 companies every day.

11 We make thousands of calls each day, and the  
12 people we call each day are appreciative of the calls.  
13 It's a pleasant experience, regardless of what the panel  
14 has heard from opponents of our industry.

15 Our experience has been that people respond  
16 favorably to our calls. Our response rates continue to  
17 remain strong, despite the media's attempt to  
18 characterize us negatively.

19 Thus, I will make the point again that company  
20 specific do-not-call lists work. Only a small  
21 percentage of the individuals we contact ask us not to  
22 be called again. If no one wanted calls, our business  
23 would already have evaporated because we have  
24 implemented company specific do-not-call lists since we  
25 opened our doors 20 years ago.

1           Instead we continue to grow, opening new  
2           locations and hiring more and more people. The free  
3           market has determined that our legitimate business  
4           should continue. Yet my impression is that the  
5           Commission has made a decision to seriously impact our  
6           future business opportunity through unnecessary further  
7           regulation.

8           I've heard in the past two days several  
9           statements from state groups how proud they are of the  
10          growth in their do-not-call list, how they're signing  
11          people up at fairs and community events, at the same  
12          time acknowledging there are inherent errors in the  
13          integrity of the lists.

14          It is as if a campaign has been launched to  
15          recruit as many people as possible to the list. Are we  
16          to expect the FTC to market your list to the country in  
17          the same aggressive manner? I certainly hope not.

18          I just want to remind you of the six million  
19          people whose jobs are depending on your decision.

20          I thank you again for the opportunity to share  
21          my views.

22          (Applause.)

23          MS. HARRINGTON-MCBRIDE: Thank you.

24          MS. HARRINGTON: Well, we're at the end of day  
25          two. We have one more day to go. We will start

1 promptly tomorrow morning at nine. Registration will be  
2 open at 8:30. Thank you all very much for being with us  
3 today.

4 (Whereupon, at 4:49 p.m., the workshop was  
5 adjourned.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 CASE TITLE: WORKSHOP

4 HEARING DATE: JUNE 6, 2002

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

12 DATED: JUNE 21, 2002

13

14

15 DEBRA L. MAHEUX

16 C E R T I F I C A T I O N O F P R O O F R E A D E R

17

18 I HEREBY CERTIFY that I proofread the transcript  
19 for accuracy in spelling, hyphenation, punctuation and  
20 format.

21

22 DIANE QUADE

23

24

25