



**March  
of Dimes**  
*Saving babies, together*

*March of Dimes  
Birth Defects Foundation*

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*Dr. Jennifer L. Howse  
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March 29, 2002

Office of the Secretary  
Room 159  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

RE: Telemarketing Rulemaking – Comment. FTC File No. R411001

On behalf of the more than 3 million volunteers and 1600 staff members of the March of Dimes, I am pleased to submit comments on the Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule (TSR) published on January 30, 2002 (67 FR **4491**).

The March of Dimes is a national voluntary health organization whose mission is to improve the health of infants and children by preventing birth defects and infant mortality. Founded in 1938, the Foundation is an historic partnership of scientists, clinicians, parents, members of the business community, and other local leaders who work to advance the Foundation's mission through chapters in every state, the District of Columbia and Puerto Rico. The March of Dimes has established a track record of lifesaving advances for America's infants and children by funding programs of research, community services, education and advocacy.

Throughout its 64-year history, the Foundation has relied upon community based fundraising, depending on small donations from a large number of individuals and families. A significant part of the Foundation's fundraising and volunteer recruitment is conducted by outside telemarketing firms. The March of Dimes is mindful of the fraudulent telemarketing concerns identified by Congress and the FTC, and believes that it is wholly appropriate for charities and telemarketers with whom they contract to be subject to public oversight and regulation. The March of Dimes requires that telemarketing firms with which the Foundation contracts comply with all state telemarketing laws and regulations.

While the Foundation acknowledges and concurs that government oversight is appropriate, the March of Dimes is deeply concerned that if the proposed FTC rule is finalized in its' current form, many charities will be adversely affected at a time when they are more critical than ever to the well being of families and communities across America.

Specifically, the Foundation is concerned about the following:

**A. Scope – Question 3 [67 FR 45371]**

The proposed rule appears to create a double standard for charitable organizations. Currently, legitimate charities, like the March of Dimes, depend upon outside telemarketing firms to assist with fundraising and volunteer recruitment. Outside firms are able to manipulate large amounts of data through sophisticated computer software and have the capacity to make telephone calls in a highly cost-effective manner. For example, through the use of telemarketers, the March of Dimes was able to place 20 million telephone calls in order to recruit 1.2 million volunteers for our Mothers *March*<sup>®</sup> fundraising program in 2001. Although the March of Dimes is a large charitable organization, the costs associated with setting up and operating an in-house telemarketing system are prohibitive. Generally, non-profits that conduct in-house telemarketing campaigns are able to do so on only a very small scale. Although the ‘VSA Patriot Act of 2001’ (P.L. 107-56) includes charitable solicitations as a class of covered telephone calls, we do not believe Congress intended to give charities that conduct in-house telemarketing an advantage over those that cannot afford the cost of an in-house system.

Further, we are concerned that the changes proposed to the Telemarketing Sales Rule will impose great new costs on charitable organizations without any corresponding benefit to the consumer. The rule creates a false distinction between telephone calls made by telemarketers on behalf of charities and telephone calls placed directly by charities. From the consumer’s perspective, a call from a contract telemarketer working on behalf of a charity is still a call from the charity. Telemarketers can be expected to pass on the costs of scrubbing names to the charity as well as the cost of any required technological upgrades. The net result is that a greater percentage of the charity’s revenue will have to be devoted to fundraising and volunteer recruitment, leaving fewer resources for community services, research, education and other mission activities. The consumer is ultimately hurt because fewer dollars are going to the charitable cause as more dollars are diverted to telemarketing compliance.

**B. Definitions – Question 3 [67 FR 45371]**

The definition of “charitable contribution” as “any donation or gift of money or any other thing of value” is vague. Specifically, it is not clear from this definition whether a solicitation for volunteers would be considered “any other thing of value.” A typical fund raising model is to solicit volunteers who then ask their friends and neighbors for donations. Volunteers are also recruited from within the business community to enlist their colleagues to support charitable causes. Often, the actual telephone solicitation is for volunteer time not a financial contribution. We encourage FTC staff and Commissioners to improve the clarity of the definitions and to specifically exclude requests for volunteer time.

## **B. Definitions – Question 4 [67 FR 45373]**

The definition of a “donor” does not accurately reflect the nomenclature used by the industry. Within the field of fundraising, a “donor” typically refers to an entity that has contributed money, goods or services in-kind. Being a “donor” connotes an established relationship with the non-profit charitable organization. A person who donates time is referred to as a “volunteer.” A prospective donor or volunteer is referred to as a “prospect.” Use of the word “donor” to connote either a donor or a prospect is confusing.

The March of Dimes suggests deleting the definitions of “Customer” and “Donor” and substituting the term “Consumer” to define any person who is or may be required to pay for goods or services offered through telemarketing or any person solicited to make a charitable contribution through telemarketing.

## **C. Abusive Telemarketing Acts or Practices – Question 6 [67 FR 4539]**

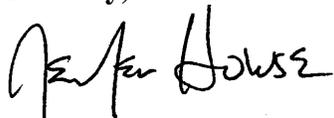
If implemented, a national “do not call” registry maintained by the federal government should preempt state lists. Otherwise it will simply add to the number of lists in current use, thereby increasing transaction costs for consumers and charities. Intrastate calls could be managed by allowing states to “opt in” to the national “do not call” list. Current State “do not call” lists have resulted in a patchwork of regulations that create confusion about which organizations and activities are covered and which are not, especially in the area of charitable solicitations and volunteer recruitment. A national registry could, if properly constructed and managed, provide consistent “one stop shopping” for consumers and telemarketers.

## **C. Abusive Telemarketing Acts or Practices – Question 9(c) [67 FR 45391]**

The March of Dimes is concerned that, if this section of the proposed rule is not modified, legitimate charitable organizations could be penalized and their ability to maintain established donor relationships significantly harmed. At the March of Dimes, prior donors and current volunteers make up more than 2/3 of recruited volunteers. The most generous donors and volunteers are those who have a prior relationship with the Foundation. Their contributions represent 80% of the revenue generated for our *Mothers March*<sup>®</sup> program, totaling \$23 million in 2001. Repeat donors and volunteers are the most committed to the March of Dimes mission of promoting maternal and child health. If the Foundation cannot contact prior donors and volunteers on the basis of a preexisting relationship then the effectiveness of our fundraising program will be jeopardized. Moreover, if this portion of the proposed regulation is not changed, consumers will lose the opportunity to hear from organizations they support and funds previously used to operate health, education and social welfare programs will be used to offset increased fundraising costs. Every dollar that is directed toward telemarketing compliance is a dollar less for much needed charitable services.

**Thank you for your consideration of our concerns. We look forward to working with you to ensure that consumers are protected from fraudulent telemarketing without interrupting or damaging the ability of legitimate charities to carry out vital, research, education and community-based services.**

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Howse". The signature is written in a cursive, flowing style.

**Dr. Jennifer L. Howse  
President**