

**PROGRESSIVE BUSINESS PUBLICATIONS**

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EDWARD M. SATELL  
PRESIDENT

March 26, 2002

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

**Re: Telemarketing Rulemaking – Comments – FTC File No. R411001**

Gentlemen:

Progressive Business Publications based in Malvern, Pennsylvania (a suburb of Philadelphia) has 13 call centers employing about 700 people. Most of our call centers are in rural communities that previously lost their manufacturing employment base. **As** such, we bring needed jobs that are valued because we provide a clean, healthy, positive office environment with decent pay. Some of the cities where our offices are located that are experiencing higher unemployment include: Dubois, Clearfield, Altoona, Pottsville and Hazelton, Pennsylvania and Woodbury, Cape May and Vineland, New Jersey.

This letter offers my comments, on the proposed revisions of the Telemarketing Sales Rules, which I oppose for the following reasons.

**1. PROPOSED RULE VIOLATES FAVORABLE SUPREME COURT DECISION WE RECEIVED**

In an important commercial speech case in which we were a principle party (Board of Trustees: State Univ. of NY, et al. v. **Fox** et al, 492 U.S. 469 (1989)), the Supreme Court ruled that with commercial speech time, place and manner regulations,

“the restrictions must be narrowly drawn and no more extensive than necessary to further substantial interest”. (492 U.S. 469, at 477).

“We require the government’s goal to be substantial and the cost to be carefully calculated. Moreover, since the state bears the burden of justifying its restrictions, it must affirmatively establish the reasonable fit we require”. (492 U.S. 469 at 489).

**As** telemarketing is entitled to a level of protection under the First Amendment, it seems self-evident that the state cannot meet the above burden.

**2. FEDERAL COURT DECISION ON MARCH 13, 2002 RULES TELEPHONE CONSUMER PROTECTION ACT UNCONSTITUTIONAL IN PART.**

I bring to the Commission's attention a most recent ruling on March 13, 2002 by U.S. District Judge Stephen N. Limbaugh in State of Missouri v. American Blast Fax, Inc. (case No. 4:00CV933 SNL) finding the Telephone Consumer Protection Act unconstitutional in part. The court relied on our Suny v. Fox (identified above) for this decision. At Judge Limbaugh's invitation, the U.S. Department of Justice intervened in the suit on behalf of the Federal Communications Commission to defend the constitutionality of the Telephone Consumer Protection Act, but failed to meet the required burden.

**3. PROPOSED RULE ONLY APPLIES TO SOME TELEMARKETING AND NOT OTHER TELEMARKETING.**

The FTC does not intend to apply the proposed rule to all telemarketing calls – just some telemarketing calls. Under such circumstances it is difficult to see what harm the FTC is trying to alleviate if allowing some calls and not others, and how the FTC meets the test requiring the government interest to be substantial as required under Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of NY, 447 U.S. 557, 100 S.Ct. 2343 (1980).

**4. THE PROPOSED RULE DOES NOT DEMONSTRATE ITS RESTRICTIONS TO ALLEVIATE HARM TO A MATERIAL DEGREE.**

When a person can end a call in less than 30 seconds by hanging up on unwanted calls, it is difficult to see how the proposed rule will meet the First Amendment standards of alleviating harm to a material degree.

**5. RULE DOOMS TELEMARKETING CHANNEL FOR COMMERCIAL SPEECH.**

The effect (and perhaps the intent) of such a rule may effectively doom consumer commercial speech via telemarketing as a viable entity.

**6. FORBIDDING LEGAL SPEECH THAT IS UNPOPULAR.**

Legislation that forbids otherwise legal speech because it is unpopular, when it does not involve safety issues, has long been against public policy. Restrictions on commercial speech of many types are often proposed by people because they prefer to be free of such messages or, due to their sensitivities, may be offended by them. But free speech is too important to our free society to be so limited, except under exceptional circumstances. For these reasons we tolerate:

- Some distasteful pornography.
- Distortions (and sometimes worse) of a free press.
- The nuisance of receiving some telemarketing calls that we don't want.

**7. USE OF PUBLIC UTILITY OF A PHONE OPENS ONE TO RECEIVE UNWANTED CALLS.**

I don't believe the claim of an exception for phone intrusion into homes is merited under the present circumstances. When people choose to use the public utility of a phone, they open themselves up to receive unwanted calls. They can restrict this intrusion by hanging **up** on a call, or keeping their name out of the phone book. But certainly, they should not be able to forbid honest calls that are not threatening, abusive or harassing. Restrictions should be limited to a tight fit between the restriction and the goal as required by *Suny v. Fox*.

**8. IMPORTANT TO OUR LIBERTIES TO KEEP SPEECH CHANNELS OPEN INCLUDING COMMERCIAL SPEECH.**

Many people object to solicitous mail for the same reasons they object to telemarketing calls. But it's important to our liberties and our economic activity to keep open the channels of communication, both commercial and otherwise, rather than to close them.

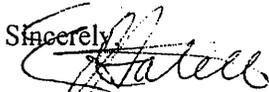
**9. JOB CREATION.**

A free and robust economy creates jobs. In the case of telemarketing, millions of jobs are created, and those jobs serve the society in many admirable ways including:

- a.) For many young people it's an entry-level job that is their starting point in the marketplace.
- b.) For many students, working parents, and the elderly, it's an ideal job because the flexible work hours are often difficult to find elsewhere.
- c.) For those who don't function well in regular business environments, it offers a workable alternative that's a win-win for everyone.
- d.) In many rural areas where traditional jobs have disappeared, low-tech telemarketing centers have been an economic boom to the local community. Without them, some communities would have greater decay and less employment opportunity.

I urge that the proposed FTC rule for a federal consumer "do not call list" be defeated because it places too big a burden on honest, commercial, free speech and the proposed penalties reflect a mean-spirited approach to regulatory enforcement. I would welcome the opportunity to give live testimony at a FTC hearing.

Sincerely,



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