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“DO-NOT-CALL LIST” TESTIMONY
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION*

TESTIMONY BY: GERALD CERASALE**

SEPTEMBER 30, 2003

Good morning, Mr. Chairman and members of the Committee. I thank you for the opportunity to appear before your Committee as it examines the issues surrounding the national Do-Not-Call Registry. I am Jerry Cerasale, Senior Vice President for The Direct Marketing Association, Inc. (“The DMA”).

The DMA is the largest trade association for businesses interested in direct, database, and interactive marketing and electronic commerce. The DMA represents more than 4,500 companies in the United States and 54 foreign nations. Founded in 1917, its members include direct marketers from 50 different industry segments, as well as the non-profit sector. Included are catalogers, financial services, book and magazine publishers, retail stores, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them.

Let me begin by stating what we have stated all week: The DMA respects the wishes of all Americans who desire not to be called by telemarketers. This is evidenced by the fact that The DMA has had its national do-not-call registry, the Telephone Preference Service (“TPS”), in place since 1985. Any consumer who wants to reduce the amount of unwanted national telemarketing calls they receive can have their name placed on the TPS for that purpose free of charge. We estimate that the TPS applies to more than 80% of all telemarketing calls. The TPS currently contains the telephone numbers of 8 million consumers.

We continue to believe that the FTC list is fatally flawed by important constitutional defects. We continue to strongly support the resolution of these issues in court.

In response to the court decisions last week, and further supporting our commitment not to call individuals who have expressed their interest not to be called, The DMA had called for all members to voluntarily comply with the registry. We were subsequently informed by the FTC staff that The DMA could not distribute the registry to its members for voluntary compliance because of legal requirements under the FTC’s rule that prohibit such distribution. Since then there have been additional developments in the courts regarding the FCC implementation of the registry.

Our current understanding is that the FCC rule remains in effect and that those telemarketers which have already obtained the registry must not call numbers on the list. As a result of the court rulings last week, telemarketers are no longer able to obtain the registry. The effect of this is that there are telemarketers in the contradictory situation of not being able to access the registry while being subject to enforcement and private causes of action. We hope to work with the FCC and FTC to resolve this dilemma and establish a means for all telemarketers to obtain

the registry, so that no telemarketers will be locked out of honoring consumer requests.

II. Telemarketing is a Critical Component of the U.S. Economy

While we respect the requests of consumers not to be called and are working hard towards that goal, it is important to keep in perspective that many American consumers respond favorably to telemarketing. Consumers respond to telephone service offerings, credit card offerings, magazine subscriptions, travel discount and many other businesses that are the mainstay of the economy. This fact is evident in the dollar amounts consumers spend purchasing products through telemarketing sales. The DMA estimates that outbound telemarketing sales result in 106 billion dollars annually.

Similarly, telemarketing provides employment to many Americans. Employment and employment growth rate in the telemarketing industry are equally impressive. In 2001, the telemarketing industry that markets to consumers was estimated to employ 4.1 million workers. A large percentage of telemarketing employment is female, working mothers, students, minorities and handicapped – all critical employment categories.

Telemarketing also adds competitiveness to the U.S. economy. It provides information on new products and services and on prices, and clearly sparks consumers' interests to buy. As one example, telemarketing is a valuable resource to rural families and others without access to certain products or services. Also, by making information about prices widely available, it promotes price competition in the marketplace. Likewise, telemarketing provides access to goods and services not generally sold in the retail market. As a means of advertising, telemarketing is a cost – effective means of introducing new products into the marketplace.

III. Steps Must Be Taken to Help Ensure the Accuracy of a Do-Not- Call List

In addition to the significant constitutional and regulatory issues, The DMA filed its legal challenge in part based on concerns that we believe are fundamental to the implementation and operation of a national registry. We believe that it is imperative that the registration process ensures the accuracy of telephone numbers that are placed on the do-not-call registry. Internet registration is subject to abuse. It is our understanding and belief that there are not sufficient protections in place in connection with Internet registration to: (1) verify that the numbers were submitted by the persons to whom the numbers are assigned; (2) determine whether the individual submitting the number has permission to submit the numbers; or (3) determine that the numbers are not business numbers (which are not candidates for inclusion on the registry).

The FTC registration process does not allow numbers to be removed from the registry via the Internet. The FTC's rationale for not allowing removal via the Internet is that there is the potential for abuse and that the FTC cannot authenticate individuals that removal of telephone numbers. This same rationale and potential for abuse exists for submitting numbers to the registry. We believe that the FTC should apply the same authentication standard to submission and removal.

IV. There should exist one uniform national do-not-call registry

The DMA also believes that there should exist one uniform national registry. The FTC and FCC registry does not create one uniform list. Rather, it leaves in place dozens of state do-not-call lists, resulting in a complex compliance task for the many legitimate industries that rely on telemarketing as a means to contact consumers.

The current framework, in which telemarketers are required to comply with numerous registries, creates significant economic and operational burdens on businesses. A preferable approach would limit these burdens by creating one registry. We believe that such an approach would in no way limit the consumer protections of individuals on the registry, but would provide a workable system for both businesses and consumers.

V. Conclusion

Again, we want to reiterate our commitment to the American people not to call those who have expressed their desire not to be called. We thank the Chairman and the Committee for the opportunity to express the views of The DMA. We know that Congress and this Committee will continue to monitor this issue closely and we look forward to working with you.

* The *Richmond Journal of Law & Technology* has not verified the accuracy of these remarks.

** Jerry Cerasale joined The DMA in January 1995, as Senior Vice President, Government Affairs. He is in charge of The DMA's contact with the Congress, all federal agencies and state and local governments. Prior to joining The DMA he was the Deputy General Counsel for the Committee on Post Office and Civil Service, United States House of Representatives. He served for twelve years at the Postal Rate Commission as Legal Advisor to Chairman Steiger and most recently as Special Assistant to the Commission. He was an attorney advisor to Federal Trade Commission Chairman Steiger. Prior to the PRC he was employed in the Law Department of the Postal Service. He received his B.A. in Government and Economics from Wesleyan University, Middletown Connecticut and his J.D. from the University of Virginia School of Law. He served in the U.S. Army from 1970 to 1972.

He is a Vice Chair of the Postal Matters Subsection of the Administrative Law and Regulatory Practice Section of the American Bar Association. He serves on the Board of Directors of the Mailers Council. He was a member of the Federal Trade Commission Advisory Committee on On-Line Access and Security.