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“Do-Not-Call List” Testimony
Before the Senate Committee on Commerce, Science, and Transportation*

Testimony by: James Guest

September 30, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to be here with you today. My name is Jim Guest, and I am President of Consumers Union, the independent, non-profit publisher of Consumer Reports magazine and ConsumerReports.org, with over five million subscribers.

Consumers Union strongly supports the Do-Not-Call registry. We believe that American consumers have a right to stop telemarketers from intruding into their homes to hawk their wares. We're talking about privacy - consumers have a right to privacy in their own home, free from the high pressure sales pitch that accompanies the typical telemarketing call. Consumer Reports wrote about this issue as early as 1993. Consumers then, like consumers today, were looking for some relief from the constant and frequently annoying phone calls.

While we at Consumers Union believe that the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) have the statutory and constitutional authority to create and enforce a Do-Not-Call registry, I'm not here to offer my legal opinion about what will happen next in the courts, or how Congress should respond to the recent court ruling. However, I am here to represent consumers and commend Congress, the FTC, the FCC, Chairman Muris and Chairman Powell for vigorously defending this important consumer right.

The last several days have been a bit of a rollercoaster for all of us concerned about this issue, and I'm sure it has been confusing for the tens of millions of consumers who placed their phone numbers on the Do-Not-Call registry. They were expecting the dinner hour to become a little more peaceful starting tomorrow night, without any of the inconvenient and unwanted telemarketing interruptions that we have all unfortunately grown accustomed to. Now they don't know what to expect.

Every day, telemarketers make over 100 million phone calls. 100 million. That's astounding. While some consumers welcome these calls, many others obviously do not. Simply put, we believe that those consumers who do not want to receive telemarketing calls shouldn't have to.

It's a matter of consumer choice, and companies nationwide should honor that choice.

The Do-Not-Call registry was borne out of the mounting frustration that so many consumers have been feeling over the years. They'd like to be able to sit down to an uninterrupted dinner, or spend a quiet evening with their kids, but too often that becomes impossible because of a ringing telephone and a persistent, hard sell sales pitch. Many have tried putting their numbers on the do-not-call lists that individual companies keep, but that piecemeal approach doesn't stop the phone calls from coming in the first instance, doesn't prevent other companies from calling,

and doesn't always work. Lists kept by the telemarketing associations have the same pitfalls. And none of these voluntary lists are in any way enforceable.

The Do-Not-Call registry that the FTC and FCC have created was supposed to take care of these shortcomings. And millions of consumers flocked to it, believing that they were finally going to be getting some relief.

Unfortunately, the recent court ruling in Denver throws all of that into doubt, at least temporarily. Three courts have had something to say about the list in the last week, and Congress and the President have weighed in as well. So much has happened so quickly that it is understandable if consumers have become confused.

I fear that come tomorrow, the calls will continue - it may be an avalanche, it may be a trickle, but it will surely be upsetting to many people who thought the calls would stop. I appreciate the fact that the Direct Marketing Association is advising its members to respect the wishes of consumers who have asked not to be called. Unfortunately, other trade associations haven't been as respectful, suggesting that their members should continue to use the list. Some have even wondered if telemarketers will now take the opportunity to turn this into a "Do Call" list, targeting people who have signed up.

I would hope that telemarketers, and the companies on whose behalf they are calling, would show some restraint. Until this is resolved by the courts - and by Congress if further legislative action is needed - all telemarketers should respect the wishes of the consumers who've made their choice known.

Throughout the debate over the Do-Not-Call registry, telemarketers have said that they don't want to call consumers who don't want to take their calls. They say they support a Do-Not-Call list, it's just not this Do-Not-Call list.

That sentiment rings very hollow for a consumer whose phone rings constantly. The consumer marketplace has spoken and the industry should heed the call of DO NOT CALL, and Congress should do whatever it takes to make this list enforceable, consistent with our Constitution.

Thank you.

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