THE DO NOT CALL LIST AUTHORIZATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JANUARY 8, 2003

Serial No. 108–1

Printed for the use of the Committee on Energy and Commerce

(

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE
84–759PS WASHINGTON : 2003

COMMITTEE ON ENERGY AND COMMERCE

W.J. "BILLY" TAUZIN, Louisiana, *Chairman*

MICHAEL BILIRAKIS, Florida
JOE BARTON, Texas
FRED UPTON, Michigan
CLIFF STEARNS, Florida
PAUL E. GILLMOR, Ohio
JAMES C. GREENWOOD, Pennsylvania
CHRISTOPHER COX, California
NATHAN DEAL, Georgia
RICHARD BURR, North Carolina
Vice Chairman
ED WHITFIELD, Kentucky
CHARLIE NORWOOD, Georgia
BARBARA CUBIN, Wyoming
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
JOHN B. SHADEGG, Arizona
CHARLES "CHIP" PICKERING, Mississippi
VITO FOSSELLA, New York
ROY BLUNT, Missouri
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
CHARLES F. BASS, New Hampshire
JOSEPH R. PITTS, Pennsylvania
MARY BONO, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
ERNIE FLETCHER, Kentucky
MIKE FERGUSON, New Jersey
MIKE ROGERS, Michigan
DARRELL E. ISSA, California
C.L. "BUTCH" OTTER, Idaho

JOHN D. DINGELL, Michigan
Ranking Member
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
RALPH M. HALL, Texas
RICK BOUCHER, Virginia
EDOLPHUS TOWNS, New York
FRANK PALLONE, Jr., New Jersey
SHERROD BROWN, Ohio
BART GORDON, Tennessee
PETER DEUTSCH, Florida
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
ALBERT R. WYNN, Maryland
GENE GREEN, Texas
KAREN MCCARTHY, Missouri
TED STRICKLAND, Ohio
DIANA DEGETTE, Colorado
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
CHRISTOPHER JOHN, Louisiana
TOM ALLEN, Maine
JIM DAVIS, Florida
JAN SCHAKOWSKY, Illinois
HILDA L. SOLIS, California

DAVID V. MARVENTANO, *Staff Director*
JAMES D. BARNETTE, *General Counsel*
REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

(II)

CONTENTS

	Page
Testimony of:	
Muris, Hon. Timothy J., Chairman, Federal Trade Commission	12
Material submitted for the record by:	
Muris, Hon. Timothy J., Chairman, Federal Trade Commission, response for the record	33

THE DO NOT CALL LIST AUTHORIZATION

WEDNESDAY, JANUARY 8, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Barton, Upton, Stearns, Gillmor, Cox, Deal, Burr, Shimkus, Bass, Terry, Dingell, Markey, Hall, Eshoo, and Strickland.

Staff present: Kelly Zerzan, majority counsel; Ramsen Betfarhad, majority counsel; Brendan Williams, legislative clerk; John Tripp, press; and Jonathan Cordone, minority counsel.

Mr. BURR [presiding]. The committee will come to order. Let me take this opportunity to welcome all of the members back to the 108th Congress.

At this time let me make a brief opening statement. This is for the purpose of members a briefing rather than a hearing, but it is—there is a record on this, and I would make a unanimous consent request at the beginning that the record be left open for all members who might have comment on this hearing. No objection, so ordered.

Although the committee does not formally organize until the end of January, due to the important subject matter and the time sensitive matter of this issue, we are holding a briefing rather than a hearing.

However, like any hearing, this briefing will be an attempt to create a record and all members will have the opportunity to offer an opening statement and ask questions of our witness.

Today we have before us the Federal Trade Commission chairman, Tim Muris, and welcome as always, to brief us on the funding issues for the Commission's new national do-not-call registry. We have all read about the Commission's national do-not-call list, which is designed to provide consumers with one central contact to stop unwanted telemarketing calls.

One remaining issue is the question of funding the do-not-call registry, which is anticipated to cost upwards of $16 million per year. The FTC plans on levying fees on the telemarketing industry for the use of the list, which would fund the operation and enforcement of the do-not-call registry.

However, in order to assess such fees, the Commission needs authorization from its authorizing committee, which is why we are here today.

The policy questions that need to be addressed include whether the authorization should be permanent or for specific fiscal years, and whether the authorization requires the FTC to raise all of its funding from the telemarketing industry or whether general appropriations should share the burden. I look forward to hearing the Commission's position on these issues.

I understand that the Commission has a very limited timeframe within which it needs to secure an authorization and appropriations in order for the do-not-call registry to be operational for fiscal year 2003.

As a result, the Commission and this committee are faced with a difficult time line. However, I can assure you that we will do our best to make sure that the national do-not-call registry is successful.

For years now the FTC, the FCC, the States, and the Direct Marketing Association have all over—had all overlapping do-not-call regulatory regimes to stop unwanted telemarketing calls.

A new national do-not-call list will cut through this regulatory morass to reduce the financial and regulatory burdens on telemarketers and be far more user friendly for the American consumer. However, consumers who place their name on the Commission's national do-not-call list will expect, and rightfully expect, that the telemarketing calls will stop.

The limited scope of the FTC's jurisdiction will not capture all of the telemarketing calls being made. This solution will not eliminate telemarketing calls for the American people.

Fortunately, the FCC is currently reviewing and will be amending its do-not-call rules. The good news is that the FCC is another agency under our purview and hopefully we can all work together to provide a total solution to the problem of unwanted telemarketing calls.

These are all important issues that we need to consider. Once again, Chairman Muris, thank you for this, and thank you for briefing the committee today. I look forward to your statement.

At this time, the Chair would recognize any members who would also like to make opening statements. The Chair would recognize Mr. Markey for 3 minutes.

[The prepared statement of Hon. Richard Burr follows:]

PREPARED STATEMENT OF HON. RICHARD BURR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Welcome everyone to the 108th Congress. Although the Committee does not formally organize until the end of January, due to the important subject matter and the time-sensitive nature of the issue, we are holding a "briefing" rather than a "hearing." However, like any hearing, this briefing will be an attempt to create a record and all Members will have the opportunity to offer an opening statement and ask questions of our witness.

Today, we have before us the Federal Trade Commission Chairman, Timothy Muris, to brief us on the funding issues for the Commission's new national "do-not-call" registry. We have all read about the Commission's national do-not-call list which is designed to provide consumers with one central contact to stop unwanted telemarketing calls.

One remaining issue is the question of funding the do not call registry, which is anticipated to cost upwards of $16 million per year. The FTC plans on levying fees on the telemarketing industry for the use of the list which would fund the operation and enforcement of the do not call registry. However, in order to assess such fees, the Commission needs authorization from its authorizing committee, which is why we are here today. The policy questions that need to be addressed include whether

the authorization should be permanent or for specific fiscal years, and whether the authorization requires the FTC to raise all of its funding from the telemarketing industry or whether general appropriations should share the burden. I look forward to hearing the Commission's positions on these issues.

I understand that the Commission has a very limited time frame within which it needs to secure an authorization and appropriations in order for the do-not-call registry to be operational in fiscal year 2003. As a result, the Commission and this Committee is faced with a difficult timeline. However, I can assure you that we will do our best to make sure that a national do-not-call registry is successful.

For years now, the FTC, the FCC, the states, and the Direct Marketing Association have all had overlapping do-not-call regulatory regimes to stop unwanted telemarketing. A new national do-not-call list will cut through this regulatory morass to reduce the financial and regulatory burdens on telemarketers and be far more user-friendly for the American consumer. However, consumers who place their names on the Commission's national do-not-call list will expect, and rightly expect, that the telemarketing calls will stop. The limited scope of the FTC's jurisdiction will not capture all of the telemarketing calls being made. This solution will not eliminate telemarketing calls from the American people.

Fortunately the FCC is currently reviewing, and will be amending, its do-not-call rules. The good news is that the FCC is another agency under our purview and hopefully we can all work together to provide a total solution to the problem of unwanted telemarketing calls.

Thank you, Chairman Muris, for briefing the Committee today and I look forward to hearing from you.

Mr. MARKEY. Thank you, Mr. Chairman. And I want to commend you and Chairman Tauzin for calling this timely members briefing on proposals from the Federal Trade Commission to create a national telemarketing do not call data base.

I also want to welcome FTC Chairman Tim Muris to the committee today to hear more about the Federal Trade Commission's historic action in this area.

The decision by the Federal Trade Commission to implement a national do-not-call data base is a giant step forward for consumers who are often plagued by unwanted intrusive unsolicited telemarketing.

When this committee in 1991 successfully approved the Telephone Consumer Protection Act legislation which I sponsored, to help consumers deal with the seemingly daily ritual of unwanted telemarketing calls, and—"Hello. No, I don't want to change my phone service. I'm very happy. How did you get my cell phone number? I am in a Congressional hearing now on this very subject. Can you please take me off—I've already asked you five times before to take me off that list."

Doesn't that just bother you, huh? That these people, and they're moving to cell phones now as well.

This was legislation—by the way, the legislation back in 1991, it was bipartisan. Norm Lent on this committee, Matt Rinaldo, Bob Livingston, Bill Paxon, Chris Smith, and Tom DeLay, were all cosponsors of my legislation back in 1991.

Now, Chairman Muris deserves tremendous credit for advancing this powerful new tool with which consumers can combat unsolicited telemarketing calls. And consumers around the country cheered when Chairman Muris announced the FTC's decision to move forward with a do not call data base the week before Christmas.

Consumers have waited a long time for the benefits of the same digital and telecommunications technology that has so advanced the ability of telemarketers to efficiently and cost effectively reach

consumers, to also be harnessed on behalf of consumers to help them address legitimate privacy concerns.

I certainly hope that consumers do not have to wait yet another year or more before the FTC is able to continue implementing its plan. While outstanding issues remain to be resolved at the Federal Communications Commission with respect to coverage of telephone companies as well as coverage of financial institutions and airlines and how much and by what methods telemarketers may be charged to support data base implementation and enforcement, such issues are ripe for consideration by the Federal Communications Commission and by the Federal Trade Commission, respectively, and we need not bring the entire do not call data base effort to an abrupt halt in order to continue consideration and resolution of these issues.

We want to work with you, Chairman Muris, as well as Chairman Tauzin and Mr. Dingell and all of the other members on the committee, Chairman Upton, to achieve timely implementation of an idea that is highly popular with our constituents. You have a box office runaway smash hit on your hands. As soon as it gets introduced into the hands of consumers, they take advantage of it as quickly as they can get to a phone and get their name on the do-not-call list.

So let's hope that we can, in Congress, help you to implement your vision, because I think it is a correct one for America, and once again congratulations.

Chairman TAUZIN. Thank you, Mr. Markey, and welcome, Chairman.

It is my time to call on Mr. Barton, but he has got a no-call note on my desk. So I will call him anyhow. Mr. Barton is recognized.

Mr. BARTON. Mr. Markey has already had a better line than that, Mr. Chairman.

I will point out that so far the record for going over on opening statements is already held by Mr. Markey. He has already gone over by 1 minute. But I am sure that he will break that record fairly soon. So he has it set up. I just wanted to say that.

I just want to say I think this is a good hearing. I am on the Texas do-not-call list, which so far hasn't seemed to help me yet. But they told me it would take about 6 months. My questions, when we have questions, if we are going to have a national do-not-call list, I would encourage the Commission, to the extent that it is within its jurisdiction, to be inclusive of all calls that it can restrict, including political calls and charitable calls.

You have so many gaps in your jurisdiction that if you add to that, for political reasons or humanitarian reasons, whatever you wish to call it, your do-not-call list isn't going to be much of a do-not-call list. So if you are going to do it, do it, or be honest and say that you don't have the jurisdiction to make it stick and pass on it.

With that I will yield back, Mr. Chairman.

Chairman TAUZIN. Thank the gentleman. Mr. Hall is recognized for an opening statement.

Mr. HALL. Thank you, Mr. Chairman. I think it is a timely hearing. I thank the chairman. I think we would do well to get underway to listen to him. I yield back my time.

Chairman TAUZIN. Further requests for time? Mr. Upton, the chairman of the Telecommunications Subcommittee.

Mr. UPTON. Thank you, Mr. Chairman. I would only like to say that we are in a little bit of an awkward sport. As Chairman of the Telco Subcommittee, I want to work with the FCC who I know has another important piece in terms of the regulatory side of this issue. And I know that they are in the process of promulgating some regulations, and think I all of us need to get to the bottom of why they are not as up to speed as the FTC is. And I intend to do that and talk with Chairman Powell and members of my subcommittee.

This is something that all of us want, not only as individuals, but for the districts that we represent as well, and I yield back my time.

Chairman TAUZIN. Further requests for time? On this side, the gentleman, Mr. Stearns, chairman of the Commerce, Trade, and Consumer Protection Subcommittee.

Mr. STEARNS. Good morning. Thank you, Mr. Chairman. And good morning and best wishes for the new year to Chairman Muris.

Let me just say, since you took the office at the Commission you have been kind enough to testify before our subcommittee, as the Chairman mentioned, the Commerce, Trade and Consumer Protection Subcommittee, on a number of occasions.

It is great that you are doing so today, and I commend you for it. Your testimony in the past has been very helpful to understand the issues, and that is why we are glad you are here this morning.

At the outset, you and the Commission staff should be commended for taking the initiative, I believe, on this issue. And I think you have done a lot of hard work promulgating the recent amendments to the Telemarketing Sales Rule, especially the do-not-call amendments.

As a member that has championed consumer information privacy legislation for the past 2 years, I think a national do-not-call list is an important, although small step toward furthering enhancing consumers' privacy. There is no question that I, along with most of my constituents welcome any effective measure designed to protect us from unwanted telephone solicitations.

A national do-not-call list goes a long way in fulfilling our want for a little peace and quiet at the family dinner table.

On a number of occasions, the Commission staff, to their credit, sat down with our staff and listened carefully to concerns that I and a few other members have raised. Some concerns have been addressed in making this rule, in my view, more effective.

There are, however, significant issues that remain, which are worthy of further Commission and committee consideration. For example, it is important that the national do-not-call list truly be a one-stop shopping experience for the consumer.

As it stands now, I understand that 28 States have their own do-not-call lists. I think we must have a single national registry or list for all interstate calls.

That is why I think the Commission must ensure harmonization among the myriad of State and Federal FTC and FCC telemarketing rules and do-not-call lists. However, the amended Tele-

marketing Sales Rule contains no substantive direction or mandate to achieve the goal of a one-stop shop for do-not-call lists.

I know there is a question as to whether the Commission has the authority to preempt State action on this matter. I think the committee should carefully examine and consider the grant of such authority.

I strongly encourage the FTC to work very closely with the FCC on its national do-not-call registry proposed rulemaking so that if the FCC was to promulgate its own rule, it is substantially in agreement and harmony with the FTC rule.

Finally, I encourage the Commission to further review its authentication procedures, especially with regards to on line registration. These outstanding issues, among others, lend themselves to future oversight hearings by this committee, Mr. Chairman.

Chairman TAUZIN. Would the gentleman yield?

Mr. STEARNS. Yes.

Chairman TAUZIN. I want to commend him on his statement. While I was not here to make an opening statement, he has really pinpointed the big concerns of our committee, Mr. Chairman, and I wanted to amplify them just a bit, that is, that the last thing we need is for two separate agencies with different jurisdictional scope crafting their own do-not-call list formulations that are going to be different and administered differently, and perhaps fall differently upon telemarketing associations and consumers.

And, so it is going to be critical, as we move forward in this hearing, to get a full understanding from you and your Commission as to what efforts have been made to coordinate with the FCC, what authority the FCC has that you do not have in terms of perfecting a rule that will work for all Americans and for the business community as well, and what efforts are going to be made to make sure that we don't have overlapping duplication, or worse yet, conflicting rules coming out of two Federal agencies.

I thank the gentleman for yielding and again, compliment him on his opening statement.

Mr. STEARNS. I thank the chairman for emphasizing again how the FTC and FCC must substantially harmonize and bring their rules together.

Let me conclude, Mr. Chairman, by saying that—I will end by speaking briefly to the specific objectives of today's hearing, the Commission's request for authority to collect fees.

I think it is important that an agency work very closely and cooperatively with its authorizing committee in Congress, namely us, even when time is a luxury and not easily afforded.

The hearing today is an important and necessary first step, according to our committee, that has jurisdiction to carefully examine your request. And so again I commend you, Mr. Muris, Chairman Muris, for coming forward and presenting your reasons for this fee. Thank you, Mr. Chairman.

Chairman TAUZIN. Thank the gentleman again. The Chair is pleased to welcome and recognize the ranking member of our full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you. And happy New Year to you and my colleagues.

Chairman TAUZIN. And indeed to you, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you for holding this public briefing on the Federal Trade Commission's national not-to-call registry. This is a matter of which I am certain will be appreciated by millions of Americans who are finding some of these calls to be a vast and a complete annoyance. This is an increasingly important issue then to consumers across the country.

Unwanted telemarketing calls have become a genuine nuisance that many consider to be an outright invasion of privacy. The national do-not-call registry would enable consumers to eliminate unwanted intrusions and once again to answer their telephones without aggravation.

Any national program to address these problems should provide common sense exceptions for charitable organizations and the existing relationships that businesses have with their customers. It should also maximize consumer choice, allowing individuals to receive the calls they want and to avoid those they do not.

Most importantly, for a national registry to be successful, it must be diligently enforced. And I look forward to seeing to it that that transpires here. It appears also that the FTC has made significant progress toward establishing such a national program.

Consumers, charities, telemarketers, State and local governments and other interested parties have voiced their complaints and communicated their concerns. The Commission appears to have carefully considered a wide range of complicated issues and produced what appears to be a balanced and thoughtful result.

The rules have been crafted. How these rules will be implemented and enforced remains to be seen. I am looking forward to hearing from Chairman Muris today regarding the FTC's plans to fund, implement and enforce its national do-not-call registry.

I look forward to the committee inquiring what we should do to cooperate, to both to make this successful, and to see what needs to be done to assure that it works in the best way possible. I am looking forward to prompt Congressional action to address this national problem of unwanted telemarketing calls.

And I note, parenthetically, that I look forward also to address the problems of cramming, spamming, and other improper actions affecting the American consuming public. Thank you for recognizing me, Mr. Chairman.

Chairman TAUZIN. I thank my friend and share his views entirely. I would be happy now to yield to my friend from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman for holding this briefing on an issue of great importance, or perhaps we should say, great annoyance.

Thank you, Chairman Muris, for visiting the committee today to describe the FTC's progress in creating a national do-not-call list to shield consumers from unwanted telemarketing calls. I count myself among the many consumers who have had the misfortune of receiving multiple unsolicited, unwanted marketing pitches over the phone, almost always timed to coincide with something critically important.

And I also count myself among those who have had to wade through a tidal wave of paper emanating from my fax machine.

Therefore, Chairman Muris, I not only support your efforts to protect consumers from hassle via voice communication, but I encourage you also to prevent aggravation via fax, and I urge this committee to support legislation to create a national do-not-fax list. Just this morning, because I left my home fax on, I ended up with half a dozen pieces of paper that I didn't want.

I commend Chairman Muris on his success in the past 12 months in amending the FTC's Telemarketing Sales Rule, concluding with the Commission's December 2002 announcement of a final rule for the creation of a national do-not-call list.

Now, of course, you seek authorization from this committee to collect fees from telemarketers to fund this effort. I urge the committee to approve this request, and also to ensure that the FTC has the authority to enforce the rule nationwide and across every industry, including such industries as banks and telephone companies, which by statute, do not currently fall under the FTC's authority in this area.

I note that the exemptions carved out from this national do-not-call list by the FTC include political solicitations. They are not covered by the do-not-call list. If protecting consumers is our governmental purpose, if every man and woman's home is to be their castle, then surely there is no reason to grant preferred status to political calls, which are often the most annoying of all.

I know that First Amendment reasons have been advanced to justify this exemption. But, giving political phone calls protected status because of the message they convey proves too much under the first amendment, because the first amendment requires that we be neutral toward the content of these calls. It is not the content of the message, it is the form that is being regulated. An exemption for political calls betrays a concern with the nature and the substance of the message being conveyed.

Finally, much as I want relief as a consumer who has been bombarded with too many intrusive marketing calls and unwanted faxes, I would also urge this committee to ensure that any authorizing legislation provide a safe harbor for those marketers who make a good faith effort to play by the rules and to ensure that the law benefits consumers, not lawyers, by clarifying that any private rights of action belong only to individual consumers, and that all damage awards go to consumers not Governments.

Thank you, Mr. Chairman. Thank you, Mr. Chairman.

Chairman TAUZIN. Thank you, Mr. Cox. Is there further request for opening statements on this side? I will come back to this side when the gentlelady is settled.

On this side? The gentleman, Lieutenant Colonel Shimkus. We will know when and if things happen in Iraq when we see the gentleman dressed in a different uniform.

I want to welcome the gentleman and ask for the opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. I will be brief. I want to ask unanimous consent that every member should have the ability to submit opening statements that hasn't.

Chairman TAUZIN. Without objection, so ordered.

Mr. SHIMKUS. I will just say that it will be nice to be about to return to the days when you wanted to—when you wanted to run

to answer the phone because you knew that the call was being placed by someone who was a friend or a colleague or a family member or it was an important thing to do.

And too many people today don't want to answer their phones. And then leave it to the answering machines to do the screening on their part. The problem is, the people with moderate incomes may not have that access to caller ID or answering machines.

And so I think the consensus here is strong. I applaud this second day of activity by the Commerce Committee. I yield back my time, Mr. Chairman.

Chairman TAUZIN. Thank the gentleman. Further requests for time on this side? The gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman. It is good to be back. I congratulate all of my colleagues on your elections. And, Mr. Chairman, happy New Year to you, and I look forward to working with all of my colleagues here.

Thank you for having the hearing. I want to salute the FTC for taking this issue on. I think it is an important consumer issue. And I am looking forward to your testimony.

I have some questions. As a consumer in this country, I am, like so many other people, irked and ticked off by the number of calls that come in. And one of my favorite responses now, if I am home around dinner time, is to say, give me your number, let me call you back.

And, at least they hang up. So obviously we need to do something about this. Consumers have been clamoring for some time. So thank you, Mr. Chairman, for holding the hearing. And to the FTC, I look forward to hearing your testimony and asking some questions.

Chairman TAUZIN. To the gentlelady, I wanted to extend to her a welcome too and a happy New Year to she and her colleagues.

I want to point out that this, while this is not an official hearing, we are not even fully constituted yet. I know you are going to add some new members to the Democratic side of our committee. We are going to be busy tomorrow, I believe, adding three, perhaps four new members to our side of the committee.

That is how important we felt this issue was that we thought we ought to take the time immediately and meet with our friend and get some reading on what is going on.

Further opening statements? The gentleman—first of all, the gentleman is recognized from Ohio.

Mr. GILLMOR. Thank you, Mr. Chairman. I want to thank the chairman for the opportunity to address the FTC's amended Telemarketing Sales Rule and particular the authorization of funding for the creation of a national do-not-call register. Over the course of the last decade, Congress enacted legislation with a goal of protecting consumers from unwanted telemarketing phone calls.

However, over the last few years, I have heard from an increasing number of northwest Ohioans conveying their opposition to telephone solicitations. And one potential reason for this scenario may be the presence of fly by-night telemarketers setting up shop and just as quickly disappearing with no intention of complying with the law.

And another may be the need to further encourage legitimate telemarketers to comply with existing statutes. Early last Congress, this panel, and later the House, overwhelmingly approved legislation banning telemarketers from blocking caller ID. And I was happy to cosponsor that bill, and I certainly applaud the FTC's recent efforts to tighten existing laws.

And I look forward to hearing about other pertinent issues from Chairman Muris, such as the rules potential impact on the telemarketing industry, as well as further authorization and funding issues.

And I yield back, Mr. Chairman.

[The prepared statement of Hon. Paul E. Gillmor follows:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

I thank the Chairman for the opportunity to address the Federal Trade Commission's (FTC) amended Telemarketing Sales Rule (TSR) and in particular, the authorization of funding for the creation of a national "do not call" registry.

Over the course of the last decade, Congress enacted legislation with the goal of protecting consumers from unwanted telemarketing phone calls. However, over the last few years, I have heard from an increasing number of Northwest Ohioans conveying their opposition to telephone solicitations. One potential reason for this scenario may be the presence of fly-by-night telemarketers setting-up shop and just as quickly disappearing, with no intention of complying with federal or state laws. Another may be the need to further encourage legitimate telemarketers to comply with existing statutes.

Early last Congress this panel, and later the House, overwhelmingly approved legislation banning telemarketers from blocking Caller ID. I was happy to cosponsor that bill and certainly applaud the FTC's recent efforts to tighten existing laws. I also look forward to hearing about other pertinent issues from Chairman Muris such as the rule's potential impact on the telemarketing industry as well as further authorization and funding issues.

Again, I thank the Chairman and yield back the remainder of my time.

Chairman TAUZIN. I thank the gentleman. Is there further request for time on this side? Then the gentleman, Mr. Bass, is recognized for an opening statement.

Mr. BASS. Thank you, Mr. Chairman. And I have a full statement for the record. And I commend you for having this hearing, inviting Commission Chairman Muris here to testify on the do-not-call list.

Like many members of this committee on both sides of the aisle, I share their support for this action. I do have concerns about the issue of fee collection, the scope of the rule, and that ultimate balance that we need to hold between the irritation and aggravation that this business creates versus an industry which employs a lot of people who might not be able to be employed in other capacities.

I commend the Commission for their work in this area and look forward to your testimony. I yield back.

Chairman TAUZIN. I thank the gentleman. Further requests for opening statements?

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, thank you for holding this briefing today. We have all gotten that phone call from a telemarketer just as we were about to sit down for a nice family dinner, and I think we can all agree it is extremely annoying when these phone calls occur often. But Mr. Chairman, I wonder if there is not an easier, less intru-

sive, less regulated, and much less expensive way to stop these unsolicited phone calls from telemarketers.

Mr. Chairman, on numerous occasions I have picked up the phone to dial one of my constituents only to have been forced to listen to a short recording stating that the person I am calling does not receive solicitations and that if this phone call is for a solicitation that this person requests to be removed from the telemarketers phone list. In addition, I must enter the phone number of the phone I am calling from in order to get beyond the recording and reach the person I am dialing. Mr. Chairman, all of this happens before the phone even rings on the other end of the line. The person I am dialing is unaware of my call until after I jump through some small, non-invasive hoops. The phone company can provide this recording for a nominal monthly charge. It is easier, less intrusive, and much less expensive than the $17 million in fees the Federal Trade Commission (FTC) proposes to charge telemarketing companies.

In addition to this recording, I have seen advertisements for items such as the "TeleZapper" which currently sells for $31.95 and is designed to help automatically remove the user's phone number from telemarketing lists. The TeleZapper does not interfere with normal calls or telephone functions and tells predictive dialing computers your phone number is disconnected. Mr. Chairman, this is one of many devices currently on the market to stop intrusive and unwanted calls.

Mr. Chairman, I understand the desire to have a National Do Not Call Registry, however, I think that more research needs to be done. With new technologies entering the market on almost a daily basis, I believe a market-based solution is more appropriate than a governmental one. The two examples I stated earlier are just two of potentially many different market-based solutions that would cost the government nothing and still give consumers the ability to block unsolicited telemarketing calls. Mr. Chairman, why are we adding more bureaucracy to an already burdened government when the market is already showing us that new, innovative technology can solve this problem?

Mr. Chairman, it is conceivable that we could kill an industry that employs hundreds of thousands of people each year. Do we know how many jobs may be lost because of the $17 million price tag the FTC plans on charging the telemarketers? Before we move forward, I think it best that we consider all our options with regards to this industry. We should only move forward after careful analysis has been made of all viable options.

PREPARED STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

My state of Michigan has very recently, on December 30, 2002, enacted a law to establish a state Do Not Call list.

Responsibility for running the list will reside with the state Public Service Commission, which will also have an option to enlist a private vendor.

If a federal agency, such as the FTC, establishes a federal do not call list, the Michigan law provides for the adoption of the federal list as the state do-not-call list.

The passage of the Michigan law demonstrates the Michigan legislature's commitment to this issue, and the importance of cutting down on telemarketing calls to the residents of Michigan.

I hear frequently from constituents that are frustrated and annoyed with the number of calls that they get from telemarketers.

Frankly, I share their views, after many a family dinner interrupted by a phone call from a telemarketer trying to sell me something.

I commend the FTC for trying to address this issue, and the Direct Marketing Association for supporting a national registry.

Some valid concerns have been raised regarding the wisdom of having separate FTC and FCC do not call registries, along with the registries of 28 states.

We want to protect consumers, but not to impose an unfair or irrational burden on businesses.

I support the creation of the FTC do not call registry, and look forward to working on ways to streamline and harmonize these registries as much as possible.

Thank you.

PREPARED STATEMENT OF HON. ELIOT ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you Mr. Chairman and I want to the thank the FTC Chairman for coming to brief us today.

Like all my colleagues, I have had numerous complaints about telemarketers calling during dinner, calling too early or too late, as well as deceptive practices.

I am pleased that the FTC is moving forward on this idea of a national do not call list. However, since authorizing law for the program is needed, I believe we should use that opportunity to provide one-stop shopping for our constituents. I am aware that due to the FTC's jurisdictional barriers, it cannot affect all telemarketers.

The FCC is also looking at creating a "do not call list" for industries under its jurisdictions. The fact is we have a responsibility to empower a single agency to handle all industries when it comes to telemarketing. Whether it be FTC, FCC, or even NASA—our constituents deserve some efficiency in this process.

My other concern is that we not destroy any of the hard work the states have already done. In 2000, Governor Pataki signed legislation creating the New York Do Not Call system. My constituents have used it, like it and don't believe the federal government should preempt it.

My questions are fairly simple—for the record could you list the industries that FTC cannot impose the "do not call list" rules upon and would FTC welcome authority to have oversight of those other industries?

Chairman TAUZIN. We turn our attention to the reason we came together. That is to hear from the Chairman of the Federal Trade Commission, the Honorable Timothy Muris for his statement.

And, Mr. Chairman, you know we usually have a 5-minute rule. It doesn't apply here. I want you to take as much time as you need. Give us some background, and a full explanation of the action of the Commission and what exactly you are seeking in new authorities.

STATEMENT OF HON. TIMOTHY J. MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. MURIS. Thank you very much, Mr. Chairman. I will take a little longer than 5 minutes, but not much. I want to hear your specific concerns and I want try to respond to some of the points that I have already heard.

I am certainly pleased to be here today on behalf of the Commission to provide you with information about our recently announced amendments to the Telemarketing Sales Rule. I want to thank you personally, Mr. Chairman, and the committee, for your support of the FTC and for holding this briefing so soon in the new Congress. I realize it is a busy week and a busy day, and I am very appreciative.

In particular, as you have already indicated, you have asked about our request for authority to collect fees to offset the cost of implementing the do-not-call registry. This is a critical aspect of the Commission's efforts to protect consumers' privacy. We look forward to working with the committee to ensure its implementation this fiscal year.

As you know, we promulgated the registry and other amendments to the Telemarketing Sales Rule under the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994. That Act directed the Commission to protect consumers from fraud and unwarranted intrusions on their privacy, and to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices.

The Commission adopted the original Telemarketing Sales Rule in August 1995. Among other provisions, the rule prohibited certain deceptive telemarketing practices, prohibited calls by telemarketers or sellers to consumers who had previously requested not to receive such calls from that particular telemarketer or seller, and prohibited calls to consumers before 8 a.m. or after 9 p.m. local time for the consumer.

The Telemarketing Act also directed the Commission to undertake a review of the Telemarketing Sales Rule within 5 years of its promulgation. The Commission began its review in late 1999 and held a public forum to examine the then-existing do-not-call provision.

On June 13, 2000, the Commission reported on its review at a hearing before this committee's Subcommittee on Telecommunications, Trade and Consumer Protection. Chairman Tauzin opened that hearing with insightful remarks about consumers' growing perception of telemarketing's intrusiveness, noting the rise in consumer complaints, and wondering if telemarketing calls were becoming more offensive.

A look back at our consumer complaint data showed that Chairman Tauzin was absolutely correct in predicting consumers' concerns about the intrusiveness of unwanted telemarketing calls.

Consumer complaints to the FTC about those unwanted calls have continued to increase since that hearing almost 3 years ago. On November 7, 2001, I presented the Commission's testimony, which Mr. Stearns referred to, before his subcommittee, and identified consumer privacy as an enforcement and programmatic priority. We stated our intent to increase the resources devoted to privacy protection, and we stated we were considering amending the Telemarketing Sales Rule to credit a national do-not-call registry.

Shortly after that, on December 10, 2001, we held a briefing with your staff to discuss our plans, including that the do-not-call registry would need to be funded by a fee paid by telemarketers. The review, the ongoing review of the Telemarketing Sales Rule offered several opportunities for us to address privacy protections.

We have prohibited—we considered, and, in fact, have prohibited, telemarketers from blocking the transmission of caller ID information on outbound telephone calls, as was just mentioned a minute ago.

Second, we have promulgated specific restrictions on the use of predictive dialer software, which results in consumers receiving dead air or disconnected calls. Finally, there is the do-not-call registry.

We received, during our rulemaking, over 64,000 written comments, which was an astonishing amount of interest, the most we have ever received on a rulemaking proceeding. These comments overwhelmingly expressed concern about unwanted calls and supported the do-not-call registry.

The Commission unanimously announced its adoption of the do-not-call amendments last month on December 18. Throughout the rulemaking process, and this is an issue that I know many of you are concerned about and so are we. We have sought to harmonize our proposed registry with the States for maximum efficiency and cost savings.

Twenty-seven States have enacted do-not-call laws, and 25 States have implemented their laws by establishing registries and collecting fees.

To comply with all 25 State laws, telemarketing firms are required to pay over $10,000 in annual fees. It is likely that this financial burden for telemarketers ultimately will be reduced with a national list. With over half of the States requiring telemarketers to buy no-call lists, and more States considering legislation to do the same, the choices are clear, either continue on a course that ultimately will require telemarketers to purchase many separate lists at an ever-increasing cost, or move to an efficient national system that also provides free access to the States.

Over the next 12 to 18 months, the FTC and the States will harmonize their do-not-call requirements and procedures. Through harmonization we believe we can eliminate costly inefficiencies to telemarketers by creating one national registry with one fee. And we have spent an enormous amount of time already on a State-by-State basis discussing this issue.

The national registry will provide efficiency benefits to consumers as well. It will give them an easy, no-cost way to sign up under both Federal and State do-not-call laws, and to file complaints if telemarketers call them in violation of State or Federal law.

Further, the national registry will benefit the telemarketers by eliminating consumers from their lists who do not wish to be called. This should enable telemarketers to be more efficient and effective in conducting their marketing.

We have also had extensive consultations with the FCC. We are—obviously I cannot speak for the FCC, we are encouraging them to adopt a rule substantially like ours. They have rulemaking underway. They would not maintain and run the registry. That would certainly be duplication. They have no intention of doing that, and they are not considering that.

But, because of jurisdictional gaps that we have, if the FCC does promulgate its rule, we believe that about 80 percent of the calls that individuals receive would be prohibited, if those individuals sign up for the do-not-call list.

Today, we are seeking Congressional approval to collect offsetting fees to fund the operation of the do-not-call registry and its related functions. We anticipate that the costs will fall in three broad categories:

First, are costs to develop and operate the do-not-call registry, including receiving complaints. Second, are our enforcement costs, which include consumer and business education and international coordination.

And third, are agency infrastructure and administration costs, including information technology structural support. We have proposed language that requests funding and authority to collect offsetting fees sufficient to cover the costs of those three categories, which we estimate at $16 million.

It is important to emphasize that this figure is only an estimate of the implementation and enforcement costs. This is largely because the most substantial component, developing and operating the do-not-call registry is part of an ongoing procurement process.

In addition, we anticipate that there may be numerous difficult-to-estimate costs associated with implementing and enforcing the do-not-call provisions. Absent Congressional approval for funding and fee collection, preferable by the end of this month, the do-not-call system will not be available to consumers in FY—in this fiscal year, 2003, because the agency will not be able to collect fees this fiscal year.

I appreciate the opportunity to describe our amendments to the Telemarketing Sales Rule, and look forward to working with the committee and the Congress as we move forward to implement these important provisions this year. I would be happy to answer any questions.

[The prepared statement of Hon. Timothy J. Muris follows:]

PREPARED STATEMENT OF HON. TIMOTHY J. MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission.[1] I am pleased to appear today, on behalf of the Commission, to provide the Committee with information about our recently-announced amendments to the Telemarketing Sales Rule ("TSR" or "Rule"). In particular, you have asked about our request for authority to collect fees to offset the costs of implementing the "do-not-call" amendments to the TSR. Our testimony provides an overview of the TSR amendment process, discussion of the do-not-call provisions, and an examination of the funding request. The do-not-call registry is an important aspect of the Commission's ongoing efforts to protect consumers' privacy, and we look forward to working with this Committee to ensure its implementation in fiscal year 2003.

I. THE TSR REVIEW

The FTC promulgated the do-not-call and other substantial amendments to the TSR under the express authority granted to the Commission by the Telemarketing and Consumer Fraud and Abuse Prevention Act ("the Telemarketing Act" or "the Act.").[2] The Telemarketing Act, adopted in 1994, directed the Commission to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices. Specifically, the Telemarketing Act mandated that the rule include prohibitions against any pattern of unsolicited telemarketing calls "which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,"[3] as well as restrictions on the hours unsolicited telephone calls can be made to consumers.[4] Accordingly, the Commission adopted the Telemarketing Sales Rule on August 16, 1995, which, *inter alia*, defined and prohibited certain deceptive telemarketing practices,[5] prohibited calls by any telemarketer or seller to any consumer who had previously requested not to receive such calls from that telemarketer or seller (the "company-specific" do-not-call provision)[6] and prohibited calls to consumers before 8:00 AM or after 9:00 PM, local time for the consumer.

The Telemarketing Act directed the Commission to undertake a review of the TSR within five years of its promulgation.[7] The Commission began its review of the TSR on November 24, 1999, with the publication of a Federal Register Notice announcing a public forum on January 11, 2000, to examine the TSR's do-not-call provision.[8] At that forum, industry representatives, consumer groups, and state law enforcement and regulatory officials discussed the existing do-not-call requirement, which prohibited telemarketers from placing calls to consumers who asked not to receive more calls from that telemarketer; efforts by industry at self-regulation in this area; the growing number of state laws establishing do-not-call lists; the absence of caller

[1] The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.
[2] 15 U.S.C. §§ 6101-08.
[3] 15 U.S.C. § 6102(a)(3)(A).
[4] 15 U.S.C. § 6102(a)(3)(B).
[5] 16 C.F.R. § 310.3.
[6] 16 C.F.R. § 310.4(b)(1)(ii).
[7] 15 U.S.C. § 6108.
[8] 64 Fed. Reg. 66124 (Nov. 24, 1999).

identification information for some telemarketing calls; and growing consumer dissatisfaction with unwanted and abandoned telemarketing calls.[9]

On February 28, 2000, the Commission published a second notice in the Federal Register, broadening the scope of its inquiry to encompass the effectiveness of all the TSR's provisions.[10] This notice invited comments on the TSR as a whole.[11]

In response to this notice, the Commission received 92 comments from representatives of industry, law enforcement, and consumer groups, as well as from individual consumers.[12] The comments uniformly praised the effectiveness of the TSR in combating the fraudulent practices that had plagued the telemarketing industry before the Rule was promulgated. They also strongly supported the Rule's continuing role as the centerpiece of federal and state efforts to protect consumers from interstate telemarketing fraud. Commenters questioned the effectiveness of the Rule's provisions dealing with consumers' right to privacy, such as the do-not-call provision and the provision restricting calling times. In particular, commenters noted that the company-specific do-not-call provision was extremely burdensome to consumers, open to violation, and hard to enforce. In addition, the company-specific do-not-call provision did not address the invasive and abusive potential of each company's initial call as telemarketing has vastly increased. They also identified a number of areas ripe for fraud and abuse, as well as the emergence of new technologies that affect telemarketing for industry members and consumers. Following the receipt of public comments, the Commission's second forum was held on July 27 and 28, 2000. On June 13, 2000, the Commission reported on its do-not-call review at a hearing before this Committee's Subcommittee on Telecommunications, Trade and Consumer Protection ("the Subcommittee") that focused on proposed legislation to protect consumers from unwanted telemarketing calls.[13] Chairman Tauzin opened the hearings with remarks about consumers' growing perception of telemarketing's intrusiveness. Noting that, from 1997 to 1999, the FTC experienced greater than an eight-fold increase in consumer complaints about telemarketing, Chairman Tauzin observed:

> We, of course, can only speculate as to the reason for this rise in consumer complaint. Perhaps more and more people see telemarketing as an intrusion on their personal in-home privacy, particularly during meal time. Don't we all have a sense of that? And perhaps pitches and telemarketing sales pitches and consumer relation practices are becoming more offensive.[14]

A look back at the Commission's consumer complaint data shows that Chairman Tauzin's observation that consumers view unwanted telemarketing calls as an intrusion was correct: consumer complaints to the FTC about unwanted telemarketing calls have continued to increase significantly over the past three years.

II. THE DO-NOT-CALL AMENDMENTS TO THE TSR

On November 7, 2001, the Commission testified before this Committee's Subcommittee on Commerce, Trade and Consumer Protection, and delineated its enforcement and programmatic priorities.[15] Among the areas highlighted was consumer privacy. The Commission stated its intent to increase the resources dedicated to privacy protection and, specifically, to consider amending the TSR to create a national do-not-call registry.

The TSR review, in fact, offered several opportunities for the Commission to address privacy protections. In January 2002, the Commission issued its Notice of Proposed Rulemaking ("NPR") to amend the Telemarketing Sales Rule to address several important concerns raised by consumers during the rule review.[16] First, the NPR proposed an amendment prohibiting telemarketers from blocking the trans-

---

[9] The transcript of the "Do-Not-Call Forum" is available on the FTC's website at the following address: http://www.ftc.gov/bcp/rulemaking/tsr/dncforum/index.html.

[10] 65 Fed. Reg. 10428 (Feb. 28, 2000).

[11] The notice also announced a second public forum to be held on July 27 and 28, 2000 to discuss provisions of the TSR other than the do-not-call requirement. The transcript for the second TSR Forum is located on the FTC's website at the following address: http://www.ftc.gov/bcp/rulemaking/tsr/tsragenda/index.htm.

[12] These public comments may be found on the FTC's website at the following address: http://www.ftc.gov/bcp/rulemaking/tsr/comments/index.html.

[13] *The Know Your Caller Act of 1999 and the Telemarketing Victim Protection Act of 1999: Hearing on H.R. 3100 and H.R. 3180 Before the Subcomm. on Telecommunications, Trade, and Consumer Protection of the House Comm. on Commerce,* 106th Cong 26-34 (2000)(statement of Eileen Harrington, Associate Director for Marketing Practices, Federal Trade Commission).

[14] *Id.* at 1 (statement of Rep. Tauzin, Chairman, Subcomm. on Telecommunications, Trade, and Consumer Protection of the House Comm. on Commerce).

[15] The testimony may be found on the FTC's website at the following address: http://www.ftc.gov/os/2001/11/muris011107.htm.

[16] 67 Fed. Reg. 4492 (Jan. 30, 2002).

mission of caller identification information on outbound telephone calls. Second, the NPR proposed specific restrictions on the use of "predictive dialer" software that, the rule review record showed, resulted in consumers receiving "dead air" or disconnected calls from telemarketers. Finally, the NPR proposed to require telemarketers subject to the Rule to subscribe to a national do-not-call registry, to be established and maintained by the Commission, and to prohibit them from calling consumers who place their telephone numbers on the national registry.

The Commission ultimately received over 64,000 written comments in its rulemaking proceeding. The overwhelming majority of these comments expressed concern about unwanted telemarketing calls, and supported the do-not-call registry proposal.[17] The Commission concluded that the rulemaking record showed that a national do-not-call registry was necessary to protect consumers' privacy from an abusive pattern of calls placed by a seller or telemarketer, and formally announced its adoption of the do-not-call amendments on December 18, 2002.[18]

Throughout the rulemaking process, the Commission's staff sought to harmonize its proposed registry with the states for maximum efficiency and cost-savings. At least twenty-seven states have enacted do-not-call laws, and twenty-five states have implemented their laws by establishing registries and collecting fees from telemarketers. To comply with these state laws, telemarketing firms that conduct business in all states are required to pay an estimated $10,139 in annual fees to obtain the state registries. Without an effort to centralize these registries under one national system, states would continue to enact their own laws and establish their own registries. With over half of the states requiring telemarketers to buy their "no-call" lists, and more states considering legislation to do the same, telemarketers ultimately will have to purchase dozens of separate lists at an ever-increasing cost. A national system that also provides free access to the states is a more efficient approach.

As the Commission indicated in the Statement of Basis and Purpose for the amended Telemarketing Sales Rule, the amendment does not preempt state do-not-call laws.[19] Based upon extensive discussions among the FTC staff and state enforcement colleagues, however, the Commission believes it likely that, over the next twelve to eighteen months, the FTC and the states will harmonize their do-not-call requirements and procedures. Indeed, we believe that most states will begin using the FTC's do-not-call registry to satisfy state law requirements, and will stop operating their own registries and collecting fees from telemarketers subject to state "no call" laws. In the handful of instances where state do-not-call laws differ from the FTC's amended TSR, we are hopeful that state authorities will ask their legislatures to amend their statutes to make them more consistent with the FTC's Rule. We also are hopeful that state authorities will ask their legislatures to make technical amendments to a variety of state laws to make it possible for the states to transfer their registry data to the national registry; to permit telemarketers to subscribe to the national registry to comply with state laws; and to allow state agencies to phase out their state registries. Through harmonization, we believe we can eliminate costly inefficiencies to telemarketers by creating one national registry—that is, one source of information—with one fee.

The *national* registry will provide efficiency benefits to consumers as well. It will give them an easy, no-cost way to sign up under both state and federal do-not-call

---

[17] These comments may be found on the FTC's website at the following address: http://www.ftc.gov/bcp/rulemaking/tsr/tsrreview.htm.

[18] Apart from the national do-not-call registry, the Commission adopted other amendments to give consumers better tools to stop unwanted calls. Within one year, telemarketers will be required to transmit caller i.d. information so consumers can know who has called them. Consumers' comments reflect their strong desire to have this information, which is analagous to a return address on postal mail. This information also will enable consumers to file meaningful complaints against telemarketers who call them in violation of the TSR. Another amendment regulates telemarketers' use of predictive dialer software. During the rule review, consumers complained of disconnected telemarketing calls, which are generated by predictive dialers set to cause excessive call abandonment. Under the amended rule, telemarketers may use predictive dialers *only* if they set the abandonment rate at 3 percent or less, and, within two seconds of the consumer's answering the call, play a message identifying the caller. This package of amendments addresses the most intrusive practices identified during our rule review and amendment proceeding. The amended rule may be viewed at the following address: http://www.ftc.gov/os/2002/12/tsrfrn.pdf.

[19] "At this time, the Commission does not intend the Rule provisions establishing a national 'do-not-call' registry to preempt state 'do-not-call' laws. Rather, the Commission's intent is to work with those states that have enacted 'do-not-call' registry laws, as well as with the FCC, to articulate requirements and procedures during what it anticipates will be a relatively short transition period leading to one harmonized 'do-not-call' registry system and a single set of compliance obligations." *Id.* at 158-59.

laws, and to file complaints if telemarketers call them in violation of state or federal laws. Further, the national registry will benefit telemarketers by eliminating consumers from their lists who do not wish to be called. This should enable telemarketers to be more efficient and effective in conducting their marketing initiatives.

III. FUNDING AND OFFSETTING FEE COLLECTION REQUEST

As mentioned earlier, the agency seeks Congressional approval to fund the operation of the do-not-call registry and its related functions through offsetting fee collections. We anticipate that the costs will fall primarily in three broad categories: (1) costs of development and operation of the do-not-call registry, including the handling of complaints; (2) enforcement costs, which includes consumer and business education and international coordination; and (3) agency infrastructure and administration costs, including information technology structural supports.

The first category relates to the development and operation of the do-not-call registry. The phrase "do-not-call registry" refers to a comprehensive, automated system that will handle a range of functions.[20] The system will enable consumers to register their telephone numbers via either a toll-free telephone number or a dedicated website. Both methods of registration will use technologies to provide reasonable assurance that the person registering is authorized to do so, and will retain only the telephone numbers of the registrant. To complement this registration process and enhance harmonization with existing state do-not-call lists, the registry will permit states to transfer their data into the registry.

Further, the system will allow telemarketers, at a minimum, quarterly access to all the registration information. Telemarketer access to the registry will be through a secure website maintained by the selected vendor, and will be granted based upon area codes selected by the telemarketer, following payment of the requisite fees.[21]

The system also must permit access by law enforcement agencies to appropriate information. Law enforcers will be able to obtain data to determine when a consumer registered, when or if a particular telemarketer accessed the registry, and what information (i.e., which area codes) the telemarketer accessed. Access by law enforcement agencies will be provided through the Commission's existing Consumer Sentinel system, which is a secure Internet website.

Additionally, the system will be designed to handle complaints from consumers who indicate they have received telemarketing calls in violation of the TSR. Consumers will be able to lodge such complaints either by a toll-free telephone call or online.[22]

In sum, the scope of the do not call system is considerable. It will have the immediate capacity to register and verify over 60 million telephone lines and process hundreds of thousands (and possibly millions) of complaints.[23]

The second cost category consists of various expenditures to enforce the do-not-call and related TSR provisions. As with all TSR enforcement, we plan to coordinate "sweeps" with our state partners and the Department of Justice, thereby leveraging resources and maximizing the deterrent impact. Further, given the fact that various telemarketing operations are moving offshore, international coordination will be especially important in the future. As such, it is a vital part of our enforcement plan.

We consider consumer and business education as important complements to enforcement in securing compliance with the TSR. Past law enforcement initiatives have made clear that a key to compliance is education. Because the amendments to the TSR are substantial, and the do-not-call system is an entirely new feature, educating consumers and businesses will reduce confusion, enhance consumers' pri-

---

[20] A number of these functions are discussed in more detail in the TSR Statement of Basis and Purpose, pp. 157-164, available at www.ftc.gov/os/2002/12/tsrfrn.pdf.

[21] The exact fees to be assessed and other aspects regarding telemarketer subscription to the do-not-call registry, will be addressed in a separate rule making that will commence upon Congressional approval of funding.

[22] The Commission currently receives consumer complaints through its toll-free number, 877-FTC-HELP or online at www.ftc.gov. We hope to steer most do-not-call complaints to the selected vendor's dedicated complaint system, where they can be processed and verified in an efficient manner. Nonetheless, we anticipate that some consumers will complain through the agency's other channels.

[23] States that have established statewide do-not-call registries have experienced consumer registration levels ranging from a few percent of the telephone lines in use within the state, to over 40 percent of all lines. Forty percent of all consumer telephone lines in the United States would equal approximately 60 million telephone numbers. In the State of Missouri, about two percent of consumers who signed up for Missouri's registry filed complaints with the State within nine months. Assuming two percent of consumers who sign up for the FTC's do-not-call registry file complaints, the Commission could expect to receive 1.2 million complaints.

vacy, and ensure the overall effectiveness of the new system. Based on our experience, a substantial outreach effort will be necessary and constructive.

The last category of costs consists of expenditures for related agency infrastructure and administration, including necessary enhancements to the agency's information technology structural support. For example, as noted above, law enforcement agencies will access do-not-call complaints through the existing Consumer Sentinel secure website. Currently, there are nearly one million consumer complaints in the Sentinel system (including identity theft-related complaints). Over one thousand individual law enforcers access the Sentinel system, passing through its secure firewall. The Sentinel system allows these law enforcers to successfully and securely identify targets, categorize trends, and buttress existing investigations.

The Sentinel system and attendant infrastructure must be upgraded to handle the anticipated increased demand from state law enforcers for access to the do-not-call complaints. Further, the Sentinel system will require substantial changes so that it may handle the significant additional volume of complaints that are expected. As noted above, the vendor's system must be able to accept hundreds of thousands and possibly millions of consumer complaints. Those complaints will be transferred to and accessible within the Sentinel system. The impact to the Sentinel system by such a huge influx of complaints can be illustrated as follows: In calendar year 2002, the Sentinel system received about 360,000 complaints. With do-not-call, the Sentinel system must be equipped to handle easily twice that volume of complaints, which will require significant changes to our information technology infrastructure.

The FTC has recently proposed FY 2003 appropriations language that requests funding and authority to collect fees sufficient to cover the costs discussed above. Specifically, the language provides for "offsetting collections derived from fees sufficient to implement and enforce the do-not-call provisions of the Telemarketing Sales Rule, 16 C.F.R. Part 310, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), estimated at $16,000,000." It is important to emphasize that this figure is only an estimate of the implementation and enforcement costs. This is largely because the most substantial component B developing and operating the do-not-call registry B is part of an ongoing procurement process. In addition, we anticipate that there may be numerous, difficult-to-estimate costs associated with implementing and enforcing the do-not-call provisions.

The Commission will determine the details of these new fees through a rulemaking proceeding. Such a proceeding will allow interested industry members and the general public to comment on, and provide information and input to, the actual fee structure.

Absent Congressional approval for funding and fee collection very soon, preferably by the end of this month, the do-not-call system will not be available to consumers in FY 2003 because the agency will not be able to collect fees in FY 2003. Our target time line is as follows: We will be ready to award a contract in early February. Consumers will be able to register their telephone lines four months later, i.e., June-July 2003. States also will be able to download their own do-not-call lists into the registry as of June. Next, in August, telemarketers will subscribe to the list, pay the requisite fees, and begin accessing those area codes needed.[24] Consumer and business education efforts will continue throughout this time period. The do-not-call provisions become effective one month after telemarketers are first provided access to the national registry. Law enforcement efforts to ensure compliance with the do-not-call provisions of the amended TSR may begin at that time.

IV. CONCLUSION

These amendments to the TSR will greatly benefit American consumers, allowing them to continue receiving the telemarketing calls they want, while empowering them to stop unwanted intrusions into the privacy of their homes. The amendments also will help direct marketers target their telephone marketing campaigns to consumers who want to hear from them over the telephone. Consumers who want to continue receiving the calls they currently receive need take no action. Consumers who wish to reduce the number of telemarketing calls they receive may do so by placing their telephone numbers on the national do-not-call list when registration opens. Those consumers still can receive calls from companies with which they have an existing business relationship, unless they instruct those particular companies, on a company-by-company basis, to stop calling them.[25] Consumers who have placed

[24] Because the fiscal year ends in September, this time line gives us very little margin for error in implementing the rule in time to collect fees in fiscal year 2003.

[25] *See* Amended TSR § 310.4(b)(1)(iii)(B)(ii).

their telephone number on the registry also can give permission to specific companies to call them.[26]

The Commission appreciates the opportunity to describe its recently-promulgated amendments to the Telemarketing Sales Rule. We look forward to working with the Committee and the Congress as we move forward to implement these important provisions in the current fiscal year.

Chairman TAUZIN. Thank you. I would recognize myself first under our time rules. Let me first ask you, what are the gaps under your authority that would be filled by the FCC?

Mr. MURIS. The FCC has authority over common carriers that we do not have. And we are primarily talking about the—you weren't here. Mr. Markey received a—appeared to receive a telephone call soliciting a long distance plan.

Chairman TAUZIN. That was all rigged, you know that.

Mr. MURIS. Well——

Chairman TAUZIN. Go ahead.

Mr. MURIS. They also, because of the nature—we don't have the authority over banks, the FCC would have authority over banks. Our rule exempts, the Telemarketing Sales Act exempts the political calls. That wasn't—it wasn't our doing, it was in the Telemarketing Act.

Chairman TAUZIN. That is in the Act?

So that is the 20 percent you are talking about?

Mr. MURIS. If the FCC acts——

Chairman TAUZIN. If they close the gaps and the rule were to go forward, what 20 percent——

Mr. MURIS. We are talking charities and we are talking the politicians. Now, the charity—and surveys, which are not covered by the Act, which are——

Chairman TAUZIN. Like the census. Like political surveys.

Mr. MURIS. Or a marketing survey. People call you up and ask you about politicians——

Chairman TAUZIN. They call and ask you about products?

Mr. MURIS. Sure.

Chairman TAUZIN. Those would be exempt.

Mr. MURIS. Also intrastate calls.

Chairman TAUZIN. Give us some idea of what would be covered, the kind of calls that you could block by getting on a do-not-call list.

Mr. MURIS. An enormous number of the calls are from those—the FCC areas, particularly the people trying to pitch long distance to you. All business calls would be blocked if you signed up for the list—cold calls, those are calls from people with whom you don't have an established business relationship.

Obviously the pattern of calls that individuals receive varies depending on their purchasing habits, you know, what lists they find themselves on. But, we do believe, and this is based on experience in talking to the States, and there are many State rules already in effect, that we would block about 80 percent of the calls.

Chairman TAUZIN. Now, turning to the question of duplication. What assurances do you have that the FCC won't duplicate your rules or write conflicting rules? Have you and the Chairman of the

[26] *Id.* at § 310.4(b)(1)(iii)(B)(i).

FCC actually talked head to head to ensure that that won't happen?

Mr. MURIS. We have—at the staff level we have had extensive conversations. Before our rulemaking began, I had considerable conversations with Chairman Powell. Again, I can't speak for him, but I believe, based on their actions so far, that they are moving forward on adopting a rule that would look very much like ours.

Chairman TAUZIN. In terms of the funding, and your authority to collect fees, you have indicated to us that you need to have that included in, I believe, the January appropriations, before the end of the month, so that you can proceed with implementing this in 2003? Is that correct? Why is that so?

Mr. MURIS. Well, the problem is, and let me walk you very briefly through the time line.

Chairman TAUZIN. All right.

Mr. MURIS. If we received the authority, we would move to finalize the contract, and we could do that in early February. It would take a while. This is a considerable infrastructure that needs to be set up. It would take about 4 months before consumers could begin registering. So consumers would register, say, in June.

Then, we would, by a month or 2 after that, the telemarketers would begin to access the registry. But it is only then, in August, you know, very near the end of the fiscal year that the telemarketers would have to pay the fee, because it is only then that we would have the registry set up that you have to access.

So if we slipped the timing very much at all, we won't be able to get the fees in this fiscal year.

Chairman TAUZIN. I see. In terms of the contract you signed, will it be a multi-year contract or a single-year contract?

Mr. MURIS. The contract will provide—it will provide for multi years, but it will be on a year basis with an option.

Chairman TAUZIN. With an option. So then, would it be acceptable, would it be workable if the Congress were to authorize this fee for a single year, this authority to collect it as a pilot operation, renewable if we agreed with you that it was working and consumers were happy with the program? Would that be acceptable and workable under the contract structure you are going to design?

Mr. MURIS. I don't think it would be feasible for a year. It might be feasible, and I want to talk to my staff and get back to you for a multi-year basis, because again, we are talking about being at the end of the fiscal year, and it will be—it will be many months—we anticipate that the registration process and, accessing the list and then addressing complaints and all of that, will carry over into the next fiscal year.

So if we had to shut down on September 30, which is this fiscal year, we would not really be able to implement the system.

Chairman TAUZIN. So if we adopted a strategy that allowed you whatever time is necessary to put this program into effect, and implemented it, but with a sunset that would have to be reauthorized on the basis is whether it was working to the satisfaction of both consumers in this country and to those who use these information systems to do their business, that that could be an option that we might exercise before the end of January?

Mr. MURIS. Obviously, I don't know what the period is, I would have to get back to you on that. But obviously it would be reasonable to let the program get set up, run, and see if it is working. So I just don't know what the precise timing would be. I do know it would take at least a couple of fiscal years.

Chairman TAUZIN. I would urge your staff to give that some strong consideration, because I have picked up a sentiment from a number of members that while they are equally determined as you are to set up some system for the consumers of America to have better control of this, that they are a little anxious about authorizing permanent fees in a system that we haven't seen operating yet.

Mr. MURIS. I understand that concern. My only hesitation is to what the period would need to be. But that seems—if that is what Congress wanted to do, that would be perfectly reasonable.

Chairman TAUZIN. Thank you. The Chair recognizes the gentlelady from California for a round of questions.

Ms. Eshoo.

Ms. ESHOO. Thank you. And thank you, Chairman Muris, for your comments. I have four questions. I am just going to state them, and then you can respond. Because I find that when I take them one at a time, wait for the response, that the clock runs out.

So the first question that I have is I would like you to clarify who has jurisdiction over the credit card companies. Obviously the FCC has the telephone companies, as I understand it.

But I think in terms of telemarketing, and the peskiest and the most aggressive marketing is done by those two. So who has jurisdiction, and how is it going to be covered?

My next question is: As you stated, there are what, 27 States that have also passed legislation. How have you worked with the States to harmonize what they have already enacted with the FTC's proposal? And do you favor the Congress providing any kind of preemption, preemptive authority so that there are consistent standards? The last thing we want is an inconsistency here. Every consumer in every State across the country should have this wonderful prepackaged plan and access to it, and not one set of standards in one place and another obviously in another.

Does the—has the DMA list been an effective marketing tool in meeting consumer demands? I don't know where you are on that. If you could just comment quickly on it.

And my last question, which may be the fifth question instead of the fourth, is, in addition to the FTC fee that you are requesting of the Congress, would the same companies have to pay fees to the States as well, or would that be eliminated?

So those are my questions, and I hope that you can answer them fully and briefly. Thank you.

Mr. MURIS. Thank you. In terms of the credit card companies, in terms of anybody who uses a for-profit telemarketer, they are subject to our jurisdiction even if the underlying company is not.

Ms. ESHOO. Is that what they traditionally use?

Mr. MURIS. Yes. I think a lot of the credit card companies use the third-party telemarketers. Now, obviously if they did it in-house, they would be exempt from us, but the FCC's authority would pick them up.

Let me address the States and your last question about the multiple fees.

Ms. ESHOO. And the phone companies, did you mention them?

Mr. MURIS. The phone companies would be the FCC's. If they use a third-party for-profit telemarketers, they would be ours.

In terms of working with the States, our rule states that we are reserving the question of preemption. And what we have found is overwhelming support in the States for uniformity, in part because we would relieve the States of the burden of running a registry. And we would allow the States to access the registry for law enforcement purposes.

We already have something like almost a thousand law enforcement partners all over the country who can access our complaint data. We have very good working relationships.

And I think most of the people overwhelmingly we talk to in the States like the idea of our running a registry that they can enforce, they can enforce it in Federal court under our law, under the law that you all passed.

They also, and many of them we expect would do this, would effectively make our law their State law, and then they could enforce it in State courts. There will be a transition period in which multiple—in which the telemarketers will have to pay fees both to us and to the States.

Because it will take a while for the States to harmonize themselves. But we think that transition period will be with maybe a few exceptions not more than a year, possibly 1½ years.

Ms. ESHOO. I think we need to ride on this one, because you don't—there is a lot of talk today about double taxation. And I think that we wanted to make this as tight as possible so that there isn't that to make it work. Otherwise, it is going to get tangled in the underbrush of what I just described. I think that it would or could.

Mr. MURIS. I agree. We have gone on a State-by-State basis.

Your final question was about the DMA lists. It is not widely known or subscribed to, consumers have to pay to sign up or place a toll call. We think, based on the experience of the States, that our approach is much more preferable.

Ms. ESHOO. Thank you, Mr. Chairman.

Chairman TAUZIN. Thank you, Ms. Eshoo. The Chair is pleased to recognize the chairman of the Energy Subcommittee, Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. And I really just have one question. I want to go back to what I said in my opening statement. I am for a do-not-call list, because I am on the do-not-call list in Texas. I am okay with a do-not-call list at the national level where there are jurisdictional issues that the States can't regulate.

But, and I understand the political sensitivity. But, if you are going to have a do-not-call list, why not have a do-not-call list and say politicians can't call and charities can't call. What is the—what is the rationale for those exemptions other than you are afraid that people up here on the dais are going to complain at you and the folks that are trying to get charitable contributions are going to complain to us and we will complain for them to you? Why not go all of the way?

Mr. MURIS. Well, the Telemarketing Sales Act again, which is passed by Congress, signed by the President, excludes the politicians.

Mr. BARTON. Are you going to blame us? Are you going to say that we passed a law that ties your hands? That is a low blow.

Mr. MURIS. It defines telemarketing to cover the solicitation of sales of goods or services or charitable contributions. So, we do have authority, because of the PATRIOT Act, over charities. We addressed charities, after extensive discussions and rulemaking and—almost all of the States exclude the charitable contributions—surveys of consumers in these States—there have been some surveys, which indicate that consumers like their do-not-call rule including the charitable exemption.

What we have done with the charities for the first time is the charities are now going to be subject to the individual do-not-call provision of the rule. And my experience with charities, and I know a lot of people's experience, I like to give my money between Christmas and New Years and write a check.

Mr. BARTON. I will remember that next year.

Mr. MURIS. Well, there is a question of what the definition of a charity is. But it begins at home.

Chairman TAUZIN. Many people believe that Barton is a charity.

Mr. MURIS. We have had a lot of experience with—you know, with for-profit telemarketers, and when you tried to put yourself on the individual do-not-call list, they would hang up on you. My experience with the charities, and a lot of people's experience, is they don't want to offend their donor base, and if you tell them not to call you, but instead to send you a letter, that they will send you a letter.

So we think that that part of the rule will work well. But, obviously, just as anything any government agency does, you know, we should, just as we were discussing a few minutes ago, we should let it be implemented, have a fair test and look at it.

Mr. BARTON. But on the political calls, you are prohibited by law?

Mr. MURIS. Absolutely.

Mr. BARTON. We have seen the enemy and he is us.

Mr. MURIS. I was asked about this at the press conference when we announced this. I said what is the truth, which is it is above my pay grade.

Mr. BARTON. We want you to tell the truth. So I am glad you told me the truth. I yield back.

Chairman TAUZIN. I thank the gentleman. Further requests for time. Mr. Strickland. You are recognized for a round of questions.

Mr. STRICKLAND. This issue of charities calling is quite interesting, I think, because, I have personally adopted a policy that if charities call, I ask them to send me something in writing, because oftentimes, I don't know who is calling and whether they are legitimate or not.

The question I have, I guess, pertains to the issue of some States having calls and other States not, and whether or not there is a States' rights issue here. If we were to make a law that would preempt the States, is that considered a thorny issue or a difficult one to deal with?

Mr. MURIS. Well, certainly the States almost reflectively take the position that they don't like Federal preemption. The reality here is, I don't think that we have to go down that thorny legal road, because we are offering something that the States want, which is, we would relieve them on the burden of administering their own system.

I believe there are enormous benefits in a national system, both to telemarketers and consumers. And I believe that because of the way we can set this up, it is a win-win for both the States and us, that we are not going to have to face the preemption question.

Mr. STRICKLAND. Has there been an effort to survey the States to—to see if that assumption is an accurate assumption.

Mr. MURIS. Absolutely. Several of the individuals behind me, as you can imagine, have spent an enormous amount of time on this. And several of the individuals behind me, one of them in fact has a big notebook with notes State by State.

I have charts, some of which are in front of me. There are many States right now that are drafting legislation to harmonize their rules with ours. Again, I think this is overwhelmingly a win-win.

Mr. STRICKLAND. Okay. Another question. What about companies that—and maybe this is not relevant. But, companies that may be located in another country or owned by a foreign entity and calls would be coming into this country from, say, Canada. What authority would you have over such calls, if any?

Mr. MURIS. Well, we certainly have jurisdiction over people who are trying to sell things within the United States.

There is an increasing difficulty and I will be talking—I have already talked to the committee staff, and I will be talking to many of the members—I have talked to a few already—there is a growing problem about cross-border fraud. And in Canada, for example, there are telemarketers set up just to call into the United States.

These are not the kind of people who the do-not-call list is aimed at. The telemarketing industry is overwhelmingly composed of legitimate people, law-abiding individuals. The fraud problem is a different story. Several provisons in the Telemarketing Sales Rule and the amendments that we just promulgated are aimed at those fraud issues.

We do have a growing problem even with the do-not-call provision, of getting evidence, because more and more telemarketing firms are using telemarketers outside the U.S., so there is a growing international component to all of this. But the fraud area is where the international issues are really tricky.

Fortunately, as I said, in the do-not-call area it is not a big problem.

Mr. STRICKLAND. But if fraud is not an issue, it is just simply calls originating from outside the country? If you have a no-call list would such a company be subject to that?

Mr. MURIS. Yes. People are selling into the United States, yes. Yes.

Mr. STRICKLAND. Mr. Chairman, no other questions.

Chairman TAUZIN. Thank you, Mr. Strickland.

On this side, the gentleman, the chairman of the Commerce, Trade, Consumer Protection Subcommittee, Mr. Stearns.

Mr. STEARNS. I guess the first question is, when will the FTC formally publish its new rule?

Mr. MURIS. It will be in the—it is available on our Web site. It will be published in the Federal Register any day now.

Mr. STEARNS. Then I guess the next question is, what consideration has the Commission given to the amount of time that businesses affected by this rule will have to comply with it?

Mr. MURIS. We have had—let me give you a little background.

We have had—I first publicly discussed the issue of a do-not-call list on October 4, 2001. I discussed it again at the DMA's national convention the next month. I discussed it in front of you that month. We are talking about 14 months ago. We have had extensive discussions with members of the industry, both privately and publicly.

In terms of when the rule will be effective, the do-not-call parts of the rule on the fastest timetable available would not be effective until August in terms of when the industry would have to access the list.

In terms of—we are dealing with caller identification, which they have a year from publication in the Federal Register to comply with that part of the rule; the rest of the rule, they have 60 days from publication of the Federal Register. I think there has been ample notice to the industry, and we have had lengthy discussions with people in the industry. I realize some of them don't like it and they have their objections, but I don't think a legitimate objection can be that we are rushing to implementation.

Mr. STEARNS. I guess, probably from an industry standpoint, they have tens of thousands of employees they have to retrain to comply with this rule, and it is probably a lot of computer programming that has to be done. And, I mean, I just don't know, but you are saying——

Mr. MURIS. Well, they already——

Mr. STEARNS. [continuing] because you have talked to them and given them plenty of notice?

Mr. MURIS. Sure. They already have 25 States to deal with. We would sell the list based on area codes, and area codes are consistent with State boundaries. So this is an issue they have already had to deal with, the national telemarketers.

Mr. STEARNS. How will the FCC list that is currently being considered relate to the FTC list?

Mr. MURIS. We have had extensive conversations at the staff level with the FCC. Before our rulemaking began, I discussed this at length with Chairman Powell. I believe—I can't speak for the FCC, I believe they will—that they are moving toward adopting a list that would substantially conform with ours.

Mr. STEARNS. So the two lists would be pretty much the same and coordination on the two of them would be——

Mr. MURIS. Yes. There would be only one national registry, which we would maintain. They would be able to enforce it in the industries over which they have jurisdiction, which are some industries over which we do not have jurisdiction.

Mr. STEARNS. The Commission has spoken to its desire to assure agreement among the State and Federal FTC and FCC rules, telemarketing rules and do-not-call lists. However, the amended Tele-

marketing Sales Rule contains no substantive direction or mandate to achieve the goal of a one-stop shop for a do-not-call list. What specific plans have you adopted and what action do you and the Commission intend to take to ensure that this harmonization, coordination and consistency becomes reality?

Mr. MURIS. Well, that is obviously a very important question.

On a State-by-State basis, we have had for months conversations about harmonization with the States that have do-not-call registries. We believe there is overwhelming support, because I think there are substantial benefits to both the States and to us.

We would relieve the States of the burden they now have of administering their own do-not-call registries for the States. And the States would be able to enforce—under the Telemarketing Sales Act, they could enforce our rule in Federal court. We anticipate that many of the States, because they would prefer to act in State court rather than Federal court, will change their legislation to allow them to enforce our rule.

So we think—because, as I mentioned before, we think this is a win-win for everyone—for the States, for consumers and for us; we think that will drive national harmonization.

Mr. STEARNS. I think that is a good answer. That is a good answer. The Commission's rule will allow for registration through an 800 number or over the Internet.

It is very difficult and expensive to authenticate individuals over the Internet without using a payment mechanism such as a credit card. How does the Commission intend to authenticate individuals that sign on to the registry over the phone via the Internet? For example, many States charge a nominal fee to consumers to sign on to State do-not-call lists as an attempt to limit frivolous requests and provide an authentication mechanism. Have you considered steps to cut down on these sort of frivolous requests?

Mr. MURIS. Yes. And we will be requesting information from people who sign up over the Internet. And we believe that through modern technology we can use that information to verify the request. We will only retain—we are not going to keep the information we use to verify. We are going to retain only the phone number. But that is an important issue, and that is one that we have thought about it, and we have a way to address it.

Mr. STEARNS. Just a last question, Mr. Chairman. Mr. Chairman, you are coming in for $16 million. And I think many of us have felt these small budgets start out at $16 million, then they escalate quite dramatically.

How did you arrive at $16 million? I don't mean the details. How as a Member of Congress am I sure we are not talking about $16 million or $54 million or $100 million?

Mr. MURIS. Well, Congress——

Mr. STEARNS. You mentioned the three things you needed for the implementation, the equipment and the enforcement, things like that.

Mr. MURIS. Sure. That is obviously an important issue. Congress, through its power of the purse, obviously has the ability to limit the amount that we can spend. And indeed the—that is something that frequently happens with these sorts of activities.

We have had an ongoing process; the largest cost by far would be the cost of the contract to develop and operate the system, including to receive the consumer complaints. We have a system right now where we receive under 400,000 complaints a year. Do-not-call easily could double or triple that number of complaints. So we need a new infrastructure to receive the complaints and the ability to access and utilize the complaints other than somebody having to sit down and do them. And both of those will require considerable infrastructure and expense.

Chairman TAUZIN. The gentleman's time has expired.

Let me remind all members we will have a vote in about 10 minutes on the floor. Under the new rules of decorum, the votes will be limited to 15 minutes only and the machines will be shut down.

The gentleman from Massachusetts, Mr. Markey, the ranking member of the Telecommunications Subcommittee is recognized.

Mr. MARKEY. Obviously the Federal Communications Commission has a role to play here as well. You don't have jurisdiction over telephone companies' soliciting. So the issue is, should you wait for the Federal Communications Commission to act before you are able to put your rules on the books?

And I say this knowing that the intrastate, the calls just made within the State are within State jurisdiction; and I will point out that Massachusetts' new do-not-call list was made available to Massachusetts citizens on January 1, last week. And on January 1 and 2, 140,000 people called in on the first 2 days to put their names on the list. And we expect 1 million Massachusetts residents out of 6.3 million, including children, to be on the list by the end of this month.

So the question is, should we wait before your part of this problem is solved, until the Federal Communications Commission should act; or should you be able to move forward? And maybe, if you think you should, how do we reconcile that with the Federal Communications Commission piece of the issue?

Mr. MURIS. Well, it is only the FTC that is going to run and operate the registry.

Mr. MARKEY. Have you already worked that out with the Federal Communications Commission?

Mr. MURIS. The Federal Communications Commission proposal does not include—they are not even considering, you know, implementing and collecting the data base. So that is—I think that is an issue that is settled.

Mr. MARKEY. So that is a moot issue. In other words, you are going to be—the Federal Trade Commission will have that responsibility for it and the Federal Communications Commission rules and regulations will feed into what you have?

Mr. MURIS. Yes. They would be able to access the data base just like all the partners that we have in all the States and localities. So, again, I can't speak for the FCC about its time line, but we are talking about not having enforcement, assuming we get Congressional approval soon for another 8 or 9 months.

So the reality is that the reason we need to go now, to get this authority now, is to be able to set up a system that can be in place in 8 or 9 months. That gives the FCC considerably more time. And I would hope and I expect—again, I can't speak for the FCC, but

I would hope and expect the FCC would be ready to go in a time very similar to the timing that we are talking about.

Congress gave—you gave the FCC and the FTC authority over telemarketers. One of us needed to act first. We acted first.

Chairman TAUZIN. Would the gentleman yield quickly?

We gave the FCC specific authority to do a no-call list and specific authority to collect fees from those accessing it. We gave the FTC authority over coercive and abusive practices. You are going to get sued over that authority; isn't that correct?

Mr. MURIS. Absolutely. But in 1991 you gave the FCC that authority. Three years later you gave the FTC authority. It is clear from the legislative history that included the authority to do something about do-not-call. Indeed, the 1995 regulation did something about do-not-call. It was on a company-by-company basis.

So the idea that the FTC has no authority over do-not-call is extremely dubious based on legislative history, based on the fact that we have acted. We don't have authority over the fees; and that is why we are here, because we are asking for the authority.

Mr. MARKEY. I would argue by the way, that the way in which these telemarketers operate when they start calling you at 9 a.m. In the morning and it just goes all day into the evening is abusive and it is coercive. That is why 140,000 people woke up, many of them with a hangover, and the first thought in their mind was, I am going to call them, you know, and make sure that they can never reach me again this early in the morning.

And I think that is—I think that is basically, you know, in the law of the doctrine is res ipsa loquitur—you know, the thing speaks for itself, the very thing that so many Americans are so passionate about. This issue, by definition, means that they view it as abusive and coercive.

I think all we are really trying to get here is a very efficient way for consumers to be able to deal with it. By having this central do-not-call list that you have established, having the Federal Communications Commission play into that with their own rules on subjects over which they have jurisdiction, I think is very good.

Just very quickly, if you don't get the authorization that you need, what does that mean in terms of this do-not-call list? What does it mean for Americans in terms of their ability to have this one-stop shopping?

Mr. MURIS. Sixteen million dollars is a lot of money to us. You know, it is not a lot of money in the grand scheme of the Federal budget, but it is a lot of money to us. We cannot possibly do the do-not-call registry and will not even consider doing it unless we have this additional money.

Mr. MARKEY. So Americans might have to wait another year before——

Mr. MURIS. If we are not authorized soon, we are not going to be able to do it for—yes, for this fiscal year. So it would—the way the appropriations process works, obviously, because we are coming up to where the appropriators are going to act for this fiscal year if it is going to happen now; or they are going to have to wait until whenever the appropriators act again, which isn't going to be soon.

Mr. MARKEY. I want a list to be able to call myself personally. I think every American does. I hope this Congress acts and acts

quickly to give the American people what they want on a very important subject.

Thank you, Mr. Chairman.

Chairman TAUZIN. The only thing that I want to point out, that res ipsa loquitur decisions are made in court. The problem I see, Mr. Markey—we are going to have to talk about it when this hearing is complete—is whether or not, if we want to give you the authority to raise money, we need to strengthen the legal question as to your authority to create the list. Otherwise, this list may not be able to go into effect because some court issues an injunction, and that is a serious concern to a legal staff.

Mr. MARKEY. I was using res ipsa loquitur as an analogy, of course. But—an administrative agency is given broad discretion under the administrative procedures, but the courts have to give, by law, great discretion to when they are making judgments.

Chairman TAUZIN. But what you are arguing is the outcome of the legal case. I am concerned that we have the prospect of a legal case because there is at least some question about whether there is—res ipsa loquitur would apply here.

The gentleman, Mr. Deal, is recognized.

Mr. DEAL. I would like to follow up just a bit more. Because my first question was going to be, do you think that there is need for further legislative language on anything other than the authorization for the fee itself? The fact that you may think that you have worked out the coordination with the FCC, I think we would all like to be certain that that is going to be a seamless process, because they are, in their jurisdiction of course, controlling an area which has the same kind of complaints.

I suppose if we are going to throw around Latin terms and res ipsa loquitur, the other is caveat emptor, "let the buyer beware," and the buyer is us in this case. We had better beware that we don't sell the American public on the idea that if you sign up for this, you are not going to get these calls anymore.

Which leads to the area of the exemptions. Do you think that you need any further legislative language to make seamless the jurisdiction under the FCC and your jurisdiction and to make that workable?

Mr. MURIS. Not for purposes of do-not-call. The Senate Commerce Committee last year passed an authorization that gives us—which is something I supported—which gives us authority over common carriers who are now exempt. You know, that would involve bigger issues.

Mr. DEAL. Yes, I understand that. I don't think too many us have too many problems with the airlines calling us or common carriers calling us. I don't think that is the area of society we are concerned with. That is probably going to be one of those areas that is going to be in limbo.

But let me talk about some the other areas that are going to be in limbo that fall primarily under State jurisdiction, namely insurance companies and financial institutions. They are excluded from your ability to put them on a no-call list.

Let's assume we get this working the way we want it to. States are still going to have jurisdictions over those institutions, by and large by State law. In the coordination of your list with State laws

that set up do-not-call lists, will there be—will it be seamless also, in that if a State has chosen to make the banking institutions or the insurance companies subject to do-not-call lists, can those be placed on this national register? Or are the States still going to have to maintain separate do-not-call lists over the institutions that only they have jurisdiction over?

Mr. MURIS. Most of these institutions that you are discussing engage in interstate telemarketing, and they are already subject to our rule if they use a third-party telemarketer. They are already subject—they will be subject to the FCC if the FCC goes ahead and acts. And, again, I want to emphasize that the State's—the one area where the States will need to act if they want to is for intrastate calls. And many of them, we anticipate, will still do that.

Mr. DEAL. Just one quick observation.

Of course, some of us might like to discuss in greater detail at another time whether or not we do not in fact—when you use an instrumentality such as a telephone that is involved in interstate commerce, whether or not in fact jurisdiction does not extend likewise to intrastate. But that is a debate for another time.

My last question is a very practical question. Is the register going to be listed by the telephone number or by the name of the person who requested it? That is significant, for example, in my household where I have my elderly mother, my elderly father-in-law, who live with us. I can understand that if I put my telephone number, which is their telephone number, on the list, they may be doing business with somebody I am not doing business with.

How do you work that? Does the one telephone number—it is by the telephone number as I understand it not the name.

Mr. MURIS. Yes, the registration is by telephone number. Now, there is an exemption which most States have and which we have although it is tighter than most of the States which is for established business relationships. So if you are doing business with someone, you will be able to call.

Mr. DEAL. I understand that but that is unlikely, that if they are doing business and they get a call that any complaint is going to be registered. But it is by the phone number itself.

Mr. MURIS. Yes. So if you have multiple phones in your house, you will have to register the multiple phones. Mr. Markey will have to register his cell phone.

Mr. DEAL. I am just glad that in the funding mechanism you are anticipating it is not like some of the States, I think mine was one of the first ones that the consumer had to pay to be able to get on the list. I am glad to see we are not taking that approach. I would hope we would not follow the suggestions that some have said that we ought to charge the consumer for verification cost. I think that would defeat the purpose.

Thank you for briefing us today.

Thank you, Mr. Chairman.

Chairman TAUZIN. Mr. Wynn is recognized.

Mr. WYNN. Thank you, Mr. Chairman. I apologize for not being here for your earlier comments. I wanted to follow up on something Mr. Deal asked.

It is my understanding now that there is no way under these procedures that you will be able to get at intrastate calls.

Mr. MURIS. We do not have authority as a Federal agency over intrastate calls; that is correct.

Mr. WYNN. Is there any proposal afoot to give you that reach?

Mr. MURIS. No, that would raise some interesting constitutional issues. Most—again, the overwhelming majority of calls are from out of State.

Mr. WYNN. The other question I have is, there have been allegations that actually this could be a cost saving to telemarketers so that instead of having to deal with all the individual State do-not-call lists, it would be a large one registry. Is that an accurate assessment?

Mr. MURIS. I think at the end of the day there will be efficiencies to telemarketers in the sense of not having to comply with multiple lists, one; two, of not having to pay, you know, lots of fees; and three—and telemarketers will tell you this privately, they won't say it publicly—they don't want to call people who don't want to be called.

Mr. WYNN. Do you in any way address the problem of call abandonment?

Mr. MURIS. Absolutely. What we have done there is, we have essentially outlawed dead air in the following sense: First of all, for people who use predictive dialers there is a safe harbor, and that is what causes the call abandonment is they have a process where they call a lot of numbers and——

Mr. WYNN. Take the first live one.

Mr. MURIS. They don't have enough people to answer them. They can only have 3 percent of those calls that they don't answer. For any call that they don't answer, they have to play a recording that tells the consumer who was calling.

Mr. WYNN. Thank you very much. No further questions.

Chairman TAUZIN. Thank you, Mr. Wynn.

Further questions from any member? We have 10 minutes and 48 seconds on ordering the previous question motion, which we will have to attend.

Mr. Chairman, let me thank you. This has been very enlightening. Obviously, you have heard the sentiments of the community of our members who represent a great community of citizens in this country. Who applaud your efforts. At the same time, we have got some serious questions about the legal and efficacy questions of proceeding with two agencies simultaneously, and you are needing some authority that you currently don't have. We do need to discuss that further.

I with appreciate hearing from your staff on any concepts that might give us a chance to have this thing tested out in a way that we can come back and revisit it to make sure it is working the way you want it do.

Particularly, you heard from several members that may even want to think about whether or not we were correct in exempting some areas from coverage. I personally am offended by all the recorded calls from politicians who aren't really live. If you are really live and you really want to call me, that is one thing, but I know a lot of folks who are tired of hearing messages from people who aren't really on the phone that were just recording a message to you from a recording studio somewhere.

It is a lot—the last question I want to ask you—I would ask you to think about it too, we don't have time to get an answer, but if you can come back to us—is, what implications will your efforts, along with the FCC's, have in driving a $650 billion industry?

This is a huge industry. It is not going to stop calling us, and we are not going to stop working with it, because telemarketing is very useful. It is a very good way of getting your products out in America. And many Americans enjoy using information systems to shop and to buy and to learn about new products.

It is a two-edged sword, and this $650 billion industry is not going to just go away because people don't want to be called. The question is how this will this migrate in the Internet world? How will it shift policy questions and considerations when broadband systems are fully deployed and voice on broadband becomes a substitute for the telephone at some time in the future?

I would like generally maybe—perhaps some writing on that from your staff to give us some idea as to whether or not we are chasing something that is going to get even bigger or more difficult in years ahead.

This has been very good, Mr. Chairman, and again I think all of us applaud your interest and the fact you are pushing this as hard as you are. We simply want to make sure it is done right, so we don't end up with something that doesn't work.

Mr. MURIS. Well, thank you very much, Mr. Chairman. Again, I am very appreciative—I guess I mentioned before you were here, the fact that you did this so quickly in the new Congress.

Chairman TAUZIN. Thank you very much. The hearing stands adjourned.

[Whereupon, at 11:35 a.m., the committee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD OF HON. TIMOTHY J. MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

RESPONSE TO QUESTIONS OF HON. RICHARD BURR

Question 1. Why would the Do Not Call List cost $16 million, and what sorts of things are covered under that figure?

Response. The FTC seeks Congressional approval for $16 million to fund the operation of the do-not-call registry and its related functions through offsetting fee collections. We anticipate that the costs will fall primarily in three broad categories: (1) costs of development and operation of the do-not-call registry, including the handling of complaints; (2) enforcement costs, which include consumer and business education and international coordination; and (3) agency infrastructure and administration costs, including information technology structural supports.

Question 2. Is it possible for the List to be implemented for less than the original $16 million figure specified?

Response. It is difficult to predict with precision the exact costs of the national do-not-call system. This is largely because the most substantial component—developing and operating the do-not-call registry—is part of an ongoing procurement process. The $16 million request is premised upon our best estimates of what is needed to develop, implement, and enforce the do-not-call provisions of the Telemarketing Sales Rule. We do not anticipate that the costs will be less than $16 million.

RESPONSE TO QUESTIONS OF HON. LEE TERRY

Question 1. How confident are you that the $17 million in fees you want to collect from the telemarketing companies will cover the cost of establishing and operating the national "Do Not Call" list? What will the FTC do to pay for establishing the

list if more operator assisted calls, and the associated expense, are required to sign people up?

Response. The FTC seeks Congressional approval for $16 million to fund the operation of the DNC registry and its related functions through offsetting fee collections. These fees will be used for the development and operation of the national do-not-call registry, as well as the attendant law enforcement, consumer and business education, and infrastructure and administrative expenses associated with the do-not-call initiative. Consumer registration will be based on an automatic system (via telephone and Internet), and it will not provide for sign-up via operator-assisted calls. I believe that the requested level of funding is sufficient to support this initiative.

Question 2. You propose to charge the telemarketing companies to fund the establishment of the list. Did you consider the concept of asking those who wish to be on the list to pay for the cost of establishing the list (i.e. the consumer)? If so, why did you not propose that option? What would be your reaction to a Congressional directive to collect fees for the cost of establishing the list to those who wish to participate in the program?

Response. The agency did consider charging consumers directly for adding their telephone numbers to the do-not-call registry, but determined not to impose such charges. The costs of collecting what would be a very small fee from each consumer who elected to list his or her number in the registry would be much greater than the fee itself. For example, if 40 million consumers register their telephone numbers in the first year—a potentially realistic figure given the experiences of some states that have established their own do-not-call registries—each consumer would have to pay a fee of $0.40 to raise $16 million. The costs for collecting that fee through the automated system that is contemplated for the national registry would be significantly higher than $0.40. The agency determined not to establish a payment system that would have to charge more to collect a fee than the fee itself.

Question 3. Will you accept Internet submissions of phone numbers to add to the list? If so, how can you be sure the person is who they say they are? How would you prevent a person from signing up others via the Internet?

Response. The national do-not-call registry will accept submissions via the Internet. To verify the identity of the person submitting the registration request over the Internet, the national registry will ask the consumer to enter his or her email address along with the telephone number to be registered. The do-not-call system will automatically send an email to that address, notifying the recipient of the pending registration request, and asking the recipient to return to the do-not-call website (via the Internet link included in the email) to confirm that registration. Only after the consumer returns to the website and provides confirmation will the requested telephone number be entered into the national registry. The system also will monitor the email addresses entered by consumers to prevent the excessive, repeated use of the same email address to verify consumer registrations.

Question 4. Has the FTC performed any studies regarding the number of jobs that will be lost upon implementation of the national "Do Not Call" list? Given the country's current economic climate, should you conduct such a study? Besides individuals who will lose jobs, how will the implementation of the national "Do Not Call" list impact the overall economy due to lost sales of goods and services?

Response. The national do-not-call registry will make the telemarketing industry more efficient by allowing telemarketers to focus their efforts on those consumers who do not object to receiving their sales calls. Similarly, by harmonizing the multitude of state do-not-call registries into one national registry, the telemarketing industry will find it more efficient to obtain consumer registration information from one source—and pay one fee—rather than acquire that information from 27 different states, as is currently required. Equally important, telemarketers eventually will pay less to comply with one national registry than the over $10,000 currently paid by those who conduct business in all states that have do-not-call laws. It is also noteworthy that the national do not call registry will not impact the large portion of the telemarketing industry that conducts business-to-business calls, that responds to calls placed by consumers to sellers or telemarketers, or that places calls to customers with whom they have an established business relationship. Finally, while we have not conducted an independent analysis of the assertions about job loss, it is worth observing that the telemarketing industry has submitted no information or data showing any loss of jobs as a result of the states that now have do-not-call registries.

Question 5. Has the FTC performed any studies or surveys of consumers as to specifically which unsolicited telephone calls they find most "annoying?" If not, why not? What if the FTC discovered that the calls citizens find most annoying are primarily those exempted under the national "Do Not Call" list?

Response. Given the breadth of comments the Commission received during its rulemaking proceeding to amend the Telemarketing Sales Rule, including comments about the numerous state do-not-call laws, such a discrete study or survey is unnecessary. Over 64,000 comments were submitted during that proceeding. Most of those comments wholeheartedly supported the establishment of a national do-not-call registry and generally objected to the intrusion that unwanted telemarketing calls as a whole cause. Those comments did indicate that consumers find less objectionable those calls they receive from companies with which they have an established business relationship. As a result, the Commission exempted such calls from the do-not-call requirements. As for other exemptions from the national registry, the FTC continues to work with the Federal Communications Commission ("FCC"), in that agency's proceeding to review and revise the regulations under the Telephone Consumer Protection Act, so that coverage by the complementary regulations will be maximized once the FCC concludes its rulemaking. Also, as I said during my testimony, the Commission can bring law enforcement actions for violations of the Telemarketing Sales Rule against third-party telemarketers making calls on behalf of entities that otherwise would be exempt from our jurisdiction.

Question 6. How exactly does this national Do Not Call list protect against fraudulent telemarketing firms? How does the FTC plan to combat fraud perpetrated by groups and organizations exempt under the national "Do Not Call" list? Are there any other measures in place or under consideration that better address the issue of telemarketing fraud?

Response. The Telemarketing and Consumer Fraud and Abuse Prevention Act, adopted in 1994, directed the Commission to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices. Establishment of a national do-not-call registry is primarily focused on protecting consumers against abusive telemarketing calls, namely, calls that "the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." 15 U.S.C. § 6102(a)(3)(A). In some instances, however, the do-not-call registry provisions will also serve as protection against fraud, as with consumers who sign up on the registry to protect themselves from exploitative or fraudulent telemarketers. As for other measures that are in place to address telemarketing fraud, many provisions in the Telemarketing Sales Rule are aimed at protecting consumers from deceptive or fraudulent telemarketing practices, including: requiring disclosure of material information that must be made in every telemarketing call; prohibiting misrepresentations of material information; requiring that a telemarketer obtain a customer's express verifiable authorization before obtaining or submitting for payment a demand draft; generally prohibiting disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; prohibiting false and misleading statements to induce the purchase of goods or services; holding liable anyone who provides substantial assistance to another in violating the Rule; and prohibiting credit card laundering in telemarketing transactions.