

STATEMENT BY

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ON BEHALF OF THE
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BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS,
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COMMITTEE ON COMMERCE

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before the Subcommittee today to discuss the important legislation pending before you on telemarketing concerns. I have a prepared statement, which I would like to present to the panel.

It is my privilege to address you today on behalf of the American Teleservices Association, the ATA. My name is Steve Brubaker. I am Senior Vice President of Operations for InfoCision Management Corporation headquartered in Akron, Ohio. We are a leading teleservices agency employing nearly 2000 people. We specialize in providing inbound and outbound call center services for many non-profit organizations and commercial companies. We are members not only of the ATA, but also of the Direct Marketing Association, the DMA.

The ATA is the trade association dedicated solely to the teleservices industry, representing the providers and users of teleservices in the United States and around the globe. The ATA was founded in 1983 to provide leadership and education in the professional and ethical use of the telephone, to increase service effectiveness, enhance customer satisfaction and improve decision-making.

Today, the ATA has more than 2,000 members in 43 states and 19 countries, representing all segments of the industry, including telemarketing service agencies, consultants, customer service trainers, providers of telephone and Internet systems, and the users of teleservices, such as advertisers, non-profit organizations, retailers, catalogers, manufacturers, financial service providers, and many others.

According to a report issued by the Texas House of Representatives in 1999, the telemarketing industry is now the single largest direct marketing system in the country, employing more than 3.4 million people nationwide and generating \$550 billion in annual revenue. Job growth in this industry is more than three times that of the overall national job growth average. With those kind of numbers, it is obvious that U.S. consumers are making use of the telephone to purchase goods and services, they enjoy having that option, and will continue to use it. Those numbers also suggest that the vast majority of telemarketing companies are doing it legally, ethically and responsibly.

The ATA membership is made up of a wide range of businesses and other entities, large and small, national and local. It is important to note that while our membership includes major players in the American economy such as AT&T, Chase Manhattan, the Chicago Tribune, IBM, GTE and SBC, it also includes a multi-faceted group of users of teleservices, such as the American Cancer Society, the Maryland Department of Business & Economic Development, Highlights for Children, the City of Austin, Texas, the Metropolitan Opera, Ohio State University, St. Judes Children's Research Hospital, the Collin Street Bakery, and the Texas Work Force Commission.

The Association is dedicated to promoting a positive image of telephone marketing through the highest standards of ethical practices throughout the industry. A primary mission of the ATA is to educate its members on the laws that govern teleservices through its annual legislative conferences, other educational seminars and conferences, and through its membership bulletins detailing trends in legislation affecting the industry. The ATA also serves as a resource to the Congress, state legislatures, state attorneys general and federal regulatory agencies in drafting appropriate and focused legislation and rules to combat deceptive practices. In support of that goal, the ATA has established a Code of Ethics, which attempts to educate Association

members, the public and public officials concerning the legal and ethical behavior for telemarketing. The Code is provided to all members as they join the Association and is available by request to the general public. It is also posted on the ATA's website (www.ataconnect.org).

The ATA is also a founding member of the FTC's Partnership for Consumer Education. As part of our continuing effort to help law enforcement agencies identify and prosecute criminals posing as telemarketers, the ATA and the FTC launched a nationwide consumer education program in 1996. The campaign's goal was to promote the Telemarketing Sales Rule. As part of that nationwide education campaign, the ATA distributes a brochure, entitled Consumer Guidelines, which contains tips for consumers on how they can obtain safe and satisfying sales and services through the convenience of the telephone and identify those tactics used by criminals in their fraudulent activities.

The ATA's commitment to encouraging and conducting legitimate and honest telemarketing programs is without question. It is with that background that we offer the following comments regarding the legislation pending before the Subcommittee today.

We are strongly opposed to the major provisions of H.R. 3180, which would restrict telemarketing calls to residential consumers by entities that fall under the FTC Telemarketing Sales Rule between the so-called "dinner time" hours of 5:00 pm and 7:00 pm. Under federal regulations implemented by the Federal Communications Commission in 1992 and the Federal Trade Commission in 1995, telemarketers are guaranteed to the right to call residential consumers between the hours of 8:00 a.m. and 9:00 p.m.

"Instituting a "dinner time" hour restriction would negatively impact the telemarketing industry, particularly those companies who focus on marketing goods and services to consumers. As an example, small companies such as Personal Legal Plans, one of our members in Charlotte, NC, generate 100% of its business contacting consumers between the hours of 5 PM and 9 PM. Reducing the calling hours by 50% would put this twenty (20) year firm out of business. Company sales would drop drastically and its ability to hire a qualified labor force would be almost impossible. Few prospective employees would be willing to drive to work for only two (2) hours of work. Personal Legal Plans pays on average over \$14 per hour to a labor force consisting of retirees, single parents, and daytime stay-at-home moms - all of whom rely on this evening employment to meet their living expenses.

The justification provided for the bill is based on constituent feedback that objects to telemarketer contacts at mealtimes. While no elected official can take voter concerns lightly, there is some question as to whether those that complain are in fact representative of the voting population. No scientifically based data has been presented in support of this premise. What has been advanced is essentially anecdotal in nature. Since industry reports that sales figures show the evening hours are the overwhelming prime period for consumer contacting, the question arises – If the majority of consumers object to evening contacts, then who is conducting all this business? The complaints clearly are not manifest in consumer turn-off.

The wisdom of government legislating mealtimes for society is fraught with far-reaching implications. Mealtime differs from household to household. An arbitrary selection of a "standard" mealtime will result in calls being made during mealtimes of those who do not conform to the federal standard. In short, there will still be contacts during the dinner hours, whenever they might be. As we have seen with other legislative and regulatory attempts at the

federal and state level to restrict calling, any legislation would be laden with exceptions for favored groups.

We are all well aware that there are several areas of constitutionally protected speech that use telemarketing to contact consumers, including non-profits and political campaigns, and that this regulatory scheme will not apply to those types of calls. These exemptions will serve to frustrate the purpose of this legislation and frustrate those consumers that had been promised two hours free from telemarketing each night.

Applied to this legislation, the practice of granting exemptions would simply create an exclusive 5pm - 7pm niche for telephone marketing for the favored entities. So we must ask the question: does a dinner time bill stop calls during the legislated timeframe? No, it simply leaves the field to the exempted groups.

Our experience has been that those who profess to be annoyed at telemarketing contacts are not selectively annoyed; they are universally annoyed, regardless of who the caller is. A call from an exempted group during the restricted hours is still a call. The excluded groups are then pushed to the 7pm – 9pm timeframe, which will surely result in an upsurge of calls at those times. This will, no doubt, result in calls for more legislation to protect the “post dinner time” hours. Carried to its logical conclusion, we will soon have “breakfast time” hours, “lunch time” hours, “after school” hours, and “daylight savings” hours. In no time, the entire telemarketing industry will have just that – no time.

How would restaurants survive if they couldn't be open after 7 PM (after the so called dinner hour)? How would retail establishments survive if stores were required to be closed the last two weeks, or even the last two days, before Christmas? How would movie theatre's survive if they

couldn't be open in the evenings?" The consumer not only has the option of not answering the telephone, they could use an answering machine, install caller ID or a "Privacy Manager"-type product, have a cellular phone, and get an unlisted number.

While the intent of H.R. 3180 may be to protect consumers from fraud, consumers and legitimate users of the telephone will ultimately be the ones who bear the burden of this bill. Telemarketing provides many benefits to consumers and the economy. Telemarketing provides a cost-effective way for legitimate businesses to reach potential consumers. Telemarketing also provides consumers with lower costs for goods or services, a wider variety of choices, and increased convenience to make their purchasing decisions. Consumers are able to complete their transactions quickly and conveniently from the comforts of their own home, thereby saving the time, effort and inconvenience of traveling to the store.

H.R. 3180 also contains a provision that would require telemarketers to advise consumers they have the right to be placed on a do-not-call list, even if the consumer does not make such a request. Such a requirement is inconsistent with the provisions of the Telemarketing Sales Rule (TSR) administered by the Federal Trade Commission. Any person requesting to be placed on a do-not-call list already has that right. Making a telephone contact is a legal action. It is inappropriate to require honest businessmen and women, engaged in a lawful, legitimate business practice, to "Mirandize" the consumers they contact.

The proposed legislation would also require telemarketers to obtain and reconcile, on a regular basis, the Direct Marketing Association's do-not-call list or the appropriate state list. The DMA's Telephone Preference Service was developed as a voluntary program; it is wholly inappropriate

that the Federal Government should now attempt to codify a voluntary program. Additionally, for the Federal Government to endorse a private company is ethically questionable.

The legislation presented here assumes that consumers do not already know their rights. How can we assume this? Last year every household in America received a postcard from “Project kNOw Fraud” clearly listing their rights when receiving a call. Every phonebook in the country has a page at the beginning listing telemarketing consumers’ rights. And, we have already documented the FTC’s Partnership for Consumer Education.

I personally have proof that a large number of consumers do know their rights. Our company manages internal company-specific do not call lists for each of our clients and we’ve seen the requests to be added to the list triple in the last few years.

As we mentioned earlier, the telemarketing industry is already regulated nationwide by both the FCC rules implementing the Telephone Consumer Protection Act and the FTC’s Telemarketing Sales Rule (“TSR”). One of the key areas in each of these rules is the requirement that companies keep specific Do-Not-Call lists of individuals who have requested not to receive any more telemarketing calls from that company.

The telemarketing industry is a unique industry. The primary expenses of the business are determined by the time spent on the telephone. A company is often measured by an amount of dollars generated per telephone or per chair. The single greatest predictor of failure in the industry is low per chair production. And the single greatest contributor to low per chair production is spending time on the telephone with people who don’t want to talk to you. Thus the industry goes to great lengths to target only those consumers who are likely purchasers of their products. The successful telemarketer is the business that talks to the fewest uninterested

parties. Consequently, it is in the industry's best interests to keep a detailed "Do-Not-Call" list. Not only does it make sense for a company's bottom line, but it increases morale and production among the sales force if they are not talking to hundreds of people who say "No" at the beginning of the call.

Additionally, the company specific "Do-Not-Call" list is the best way to empower consumers to make the type of informed purchasing decisions that are necessary for a satisfactory sale. For consumers who do not want to receive calls from a particular company telemarketing them goods or services, all they have to do is tell the telemarketer during the call. However, for those consumers who want to receive calls or really only want to receive certain types of calls, the existing federal rule allows them the freedom to determine which calls they want to receive and prohibits those calls they don't. This is an area where consumers alone hold the key to keeping telemarketers out of their home.

We maintain the best way to protect consumers from fraud is through increased consumer education and funding for the federal and state law enforcement agencies, namely, the Federal Trade Commission, Federal Communications Commission, and the Department of Justice and Federal Bureau of Investigation, so efforts can be further continued and coordinated to get the perpetrator of fraud off the telephone and protect consumers -- senior citizens in particular -- from becoming victims of telemarketing fraud. The solution is not to limit the telemarketing industry's right to call to consumers or establishing a precedent that would not be cost effective or beneficial to industry or consumers.

A final provision in H.R. 3180, and the major tenet of H.R. 3100 is to prohibit the blocking of Caller ID devices. The ATA has no opposition to this point. We believe that using Caller-ID blocking of any kind, whether it is per-call blocking, per-line blocking or another similar method,

is wrong. The members of the ATA are proud of the business they are in and the service they provide to consumers. They would rather consumers knew exactly who they were taking calls from and who they were purchasing goods or services from. The ATA supported similar measures in several states in recent years. However, any requirement that either the telemarketer's name or the word "telemarketer" show up on a consumer's Caller-ID will pose a significant problem for the majority of telemarketers, as in most instances, the technology does not exist to allow such a designation to be displayed.

It is my understanding that in most cases, telemarketing calls originating on a telephone service outside the consumer's local calling area and being routed over a switch such as a T-1 line that is different from the consumer's local service provider will not allow the caller's name or any other information to be displayed. Obviously we cannot support legislation that we cannot, despite our best efforts, comply with.

Thank you, and I am happy to take any questions.