Written statement

before the

Subcommittee on Consumer Affairs, Insurance and Auto Safety of the
Committee on Commerce, Science and Transportation
United States Senate

on

Oversight of Telemarketing Practices

July 31, 2007

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Chairman Pryor, Ranking Member Sununu, and Members of the Subcommittee, on behalf of AARP's 39 million members, thank you for the opportunity to testify on the Do Not Call Registry (DNCR) and telemarketing fraud.

Do Not Call Registry

AARP's members are among the millions of Americans who have taken the initiative to place their phone numbers (over 132 million as of 2006)[1] into the DNCR in an effort to reduce the number of unwanted telemarketing calls. Survey results show that the Registry has been very successful from the consumer standpoint. A December 2005 Harris Interactive survey[2] found that 76 percent of respondents had signed up for the Registry, and 92 percent of them had received fewer telemarketing calls.

AARP's own surveys indicate that an overwhelming number of people view telemarketing sales calls as an invasion of privacy and have supported the creation of "do not call" lists as a way to stop these unwanted intrusions.[3] The DNCR is considered one of the best consumer programs ever implemented, and regulators should be commended for their capable implementation and enforcement of this important consumer protection. There is more that can be done to enhance the protections of the DNCR, and AARP believes that it should continue to be funded by the telemarketing industry, rather than by taxpayers or consumers who place their name on the DNCR.

Notwithstanding the success of the DNCR, consumers still believe they receive too many telemarketing calls. For example, in a 2005 study conducted by AARP, 62 percent of respondents with telephone numbers *registered with the DNCR* indicated that they still received more telemarketing calls than they would like. In order to make the DNCR an even bigger success for consumers, the FTC should adopt additional rules to further decrease the number of telemarketing calls.

AARP is pleased that the FTC is considering changes in two areas that could help achieve this outcome: (1) prohibiting all unsolicited prerecorded telemarketing calls, including those from sellers to established business customers, and (2) retaining and strengthening call abandonment measures. AARP recommends that the FTC act to further relieve consumers of unwanted telemarketing calls from companies with which they have an established business relationship.

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[1] "FTC Annual report to Congress for FY 2006 pursuant to the Do Not Call Implementation Act on the National Do Not Call Registry," page 4. See http://www.ftc.gov/os/2007/04/P034305FY2006RptOnDNC.pdf.
[2] Note that the survey was conducted online, which may limit the survey's ability to generalize to the entire (online and offline) population. For more information on the survey, see http://www.harrisinteractive.com/harris_poll/index.asp?PID=627.
[3] 2005 AARP Public Policy Institute survey.

Prerecorded Telemarketing Calls

AARP believes that all unsolicited prerecorded telemarketing calls, including those from sellers to established business customers should be prohibited. Consumers consider prerecorded telemarketing calls a particularly "coercive or abusive" infringement on their right to privacy.[4]

AARP believes that the prohibition on prerecorded telemarketing calls should apply whether the calls are received by a person, an answering machine, or a voice mail system. A simple prohibition on prerecorded telemarketing calls is the best course for consumers. AARP has submitted comments to this effect to the FTC in its ongoing proceeding reviewing the Telemarketing Sales Rule.

Retaining and strengthening call abandonment measures

Telemarketers typically abandon calls when predictive dialing techniques reach more than one person at the same time; they speak to one person and drop the call to the others who pick up. Unfortunately, in far too many cases, the consumer rushes to pick up the phone only to hear dead air or a click as the phone call is terminated with these "abandoned" calls.

For mid-life and older Americans, these calls are more than just a nuisance. In addition to the inconvenience and risk associated with rushing to answer the telephone, there is the uncertainty and concern of the consumer, especially for women living alone. When no one is on the other end of the line, or a consumer hears a "click" when answering the telephone, a number of different scenarios may begin to play out in the individual's mind. Is the caller attempting to know if the consumer is home alone or away from the home? Was this an important call that the consumer just missed answering? For these reasons, abandoned calls should be required to include some identifying information conveyed to consumers in order to remove some of the uncertainty that currently exists when older persons answer abandoned calls.

AARP is concerned with proposals by industry to change the rules in a way that could increase the number of calls abandoned by telemarketers. A change in the measure for abandoned calls could provide an opportunity for telemarketers to "game" the system and alter call abandonment rates over the course of each calling campaign. Instead, we reiterate our recommendation that the rule be retained and strengthened to provide stronger consumer protections outlined above.

Established Business Relationship Calls

AARP has continually expressed the concern that the current definition of an "established business relationship" is too broad, increasing the likelihood that consumers get unwanted telemarketing calls. Specifically, we do not believe every contact between a consumer and a

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[4] 2005 AARP Public Policy Institute survey.

business should establish a business relationship between them. For example, a consumer who merely inquires or provides an opinion about a company's products and services should not be subjected to subsequent telemarketing calls from the company.

We suggest that the FTC change the definition of "established" to require that the relationship be ongoing, i.e., where the consumer has completed a transaction (making a purchase or a payment) with a company within the 12 consecutive months prior to the call. In addition, if a consumer requests placement on a company's Do Not Call list, that request should be extended to all of the company's affiliates with whom the consumer does not have an ongoing relationship.

Telemarketing Fraud

Despite the success of the Registry, and the requirement that telemarketers review their lists against the DNCR every month, telemarketing fraud – in particular, fraud targeting older Americans – remains a major problem. Thieves continue to evade the law to commit fraud that can potentially wipe out the lifetime savings of unsuspecting older Americans.

According to the National Consumer League, [5] 50 percent of telemarketing fraud victims were 50 or older and 32 percent were 60 or older. At the other end of the spectrum, people under 30 represented just 15 percent of all telemarketing fraud reports, and those under 20 just one percent. The NCL statistics also show that 46 percent of thieves initially target people by phone, suggesting that even in the age of the Internet, telemarketing fraud remains a significant problem. AARP research sheds light on part of the reason that seniors are targeted in telemarketing fraud schemes: most older victims do not realize that the voice on the phone could belong to someone who is trying to steal their money.[6]

In 2005, the average reported loss for telemarketing fraud was $2,892.[7] The Federal Trade Commission estimates that consumers lose $40 billion a year in telemarketing fraud, and the FBI estimates that there are 14,000 illegal telephone sales operations active each day.[8] But behind the statistics are real people who are scammed – sometimes out of their entire life savings. Consider the following:

- A recent *New York Times* story highlighted telemarketing fraud against Richard Guthrie, a 92-year-old Army veteran living off of approximately $800 in Social Security benefits each month. He said that he once enjoyed telemarketing calls because they helped stem the

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[5] See http://fraud.org/stats/2006/telemarketing.pdf.
[6] *Off the Hook: Reducing Participation in Telemarketing Fraud*, AARP Foundation, 2003. See http://assets.aarp.org/rgcenter/consume/d17812_fraud.pdf.
[7] See http://www.fraud.org/toolbox/2005_Telemarketing_Fraud_Report.pdf.
[8] See http://www.ftc.gov/os/comments/dncpapercomments/04/lsap3.pdf.

loneliness he had felt since his wife's death.[9] infoUSA, a company which compiles vast databases of consumer information, sold Mr. Guthrie's information to thieves who defrauded him of $100,000 through telemarketing.

- 86-year-old Claire Wilson, desperate for money when her son-in-law needed a liver transplant, was conned out of $8,000 in savings after receiving a call that she had "won" $100,000 in a Canadian lottery.[10] The Canadian lottery scam is one of the Federal Trade Commission's top two scams, costing unsuspecting Americans $120 million each year.[11]

- Patricia Candelaria, 83, fell prey to a similar scam, paying nearly $200,000 on supposed taxes and insurance for a sweepstakes prize that did not exist.[12] The supposed contest representative, who identified himself as David Sommers of the National Contest Association, called Ms. Candelaria incessantly and sent her invoices for past due payments.

- 50-year-old Yvette Jones, a single mother and office worker, was scammed by someone who identified herself as Lisa James of the Department of Housing and Urban Development.[13] Jones had submitted several applications for what she thought were government grants to cover the cost of her new roof, and the fraudster told Ms. Jones that she had been awarded a $5,500 grant that required a $349 application fee. Ms. Jones paid it but of course never received the grant. She later found out that she had visited bogus websites that had put her information into "sucker lists."

Telemarketing fraud is already illegal, but more can and should be done. One of the issues we recommend Congress study and potentially take action on relates to how thieves are able to take money out of their victims' bank accounts. Often, this happens through "demand drafts," unsigned paper checks that state "authorized by drawer" or "signature on file" in lieu of the signature. The FTC addressed the use of demand drafts to commit fraud in testimony before the Senate Banking Committee:

> Demand draft fraud, or the unauthorized debiting of a consumer's checking account, is a growing problem. Currently, it is the favorite method of fraudulent actors for taking consumers' money through fraudulent telemarketing and other scams. …
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> Many fraudulent actors persuade consumers, either over the telephone or through the mail, to divulge their checking account numbers by telling them that their bank account numbers are needed to verify prizes or to deposit prize money directly into consumers'

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[9] "Bilking the Elderly, With a Corporate Assist," by Charles Duhigg, *New York Times*, May 20, 2007. See http://www.nytimes.com/2007/05/20/business/20tele.html?ex=1337313600&en=38f9ae54aac348d4&ei=5090.
[10] "Can't Win for Losing," By Carole Fleck, *AARP Bulletin*, December 2004. See http://www.aarp.org/bulletin/consumer/a2004-12-09-cantwin.html.
[11] For more information on this scam, see http://www.ftc.gov/bcp/conline/pubs/alerts/intlalrt.pdf.
[12] "Scam Alert: Misplaced Trust," by Sid Kirchheimer, *AARP Bulletin*, July-August 2007. See http://www.aarp.org/bulletin/consumer/scam_alert_misplaced_trust.html.
[13] "Scam Alert: Uncle Sham Wants you," by Sid Kirchheimer, *AARP Bulletin*, December 2006. See

bank accounts. In other cases, fraudulent actors tell consumers that only a small amount will be withdrawn, but in fact withdraw huge amounts of money from the consumer's checking account. As a further insult, the unauthorized demand draft may generate significant overdraft charges to the consumer if the consumer does not have the additional money in the first instance or has written subsequent checks. Little do consumers know that once they give fraudulent actors access to their bank account information, their money will disappear. [14]

Demand drafts are currently the subject of a case against Payment Processing Center (PPC) brought by the U.S. attorney in Philadelphia. According to this lawsuit, fraudulent telemarketers deposited $142 million in demand drafts from PPC into their bank accounts.[15]

Demand drafts, unlike Automated Clearing House (ACH) debits, are not subject to the rules of the National Automated Clearing House Association (NACHA). Attorneys General in 35 states plus the District of Columbia and American Samoa have called for an outright ban on demand drafts because they are so frequently used to commit fraud against consumers.[16] This is clearly an issue ripe for further consideration by Congress.

AARP believes that the FTC should strengthen the Telemarketing Sales Rule. Rulemaking and enforcement efforts should address problems that remain in the telemarketing industry, such as online fraud, unauthorized access to consumer bank accounts, disclosures regarding premiums and prize promotions, repeat calling of telemarketing fraud victims, and the contacting of consumers who have placed themselves on the DNCR. The Department of Justice should also be vigorous in enforcing efforts to combat telemarketing fraud.

Civil and criminal penalties should be imposed for violations of telemarketing laws and regulations, including prison terms for those who knowingly deceive consumers. These penalties should be assessed based on the degree of fraud committed, regardless of the actual dollar amount lost. Appropriate investigative and enforcement tools should also be available to regulators.

States are also key players in this area. Because of the serious gap in consumer protections in the area of telemarketing, states play an invaluable role in preventing, deterring, and prosecuting telemarketing fraud. Reducing the pervasiveness of telemarketing fraud and obtaining restitution for victims requires strong enforcement by all levels of government.

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[14] Prepared Statement of Jodie Bernstein, Director, Bureau of Consumer Protection, FTC, before the Senate Banking Committee on 4/15/06. See http://www.ftc.gov/speeches/other/ddraft.shtm

[15] "Bilking the Elderly, With a Corporate Assist," by Charles Duhigg, *New York Times*, May 20, 2007, at http://www.nytimes.com/2007/05/20/business/20tele.html?ex=1337313600&en=38f9ae54aac348d4&ei=5090.

[16] See complaint in *Mary Faloney v. Wachovia Bank*, U.S. District Court for the Eastern District of Pennsylvania, at http://www.langergrogan.com/LangerGrogan/home.nsf/wachovia.pdf.

Summary

In summary, the Do Not Call Registry has been largely successful, but AARP recommends additional consumer protections. Such protections include the prohibition of all unsolicited prerecorded telemarketing calls and narrowing of the definition of "established business relationship." We also believe that industry should continue to fund the DNCR; this cost should not be borne by taxpayers or consumers who place their name on the Registry.

Despite the success of the DNCR, telemarketing fraud remains a significant problem for older Americans, who are targeted because of their higher level of savings than the general population. Federal and state lawmakers need to work together to establish a strong set of anti-telemarketing fraud laws and regulations and to bring enforcement actions against thieves.