

Testimony before the  
House of Representatives  
Commonwealth of Pennsylvania  
**Consumer Affairs Committee**

**House Bill 1089**  
*Tuesday, February 29, 2000*

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representing the  
**Direct Marketing Association**

Good afternoon, Chairman Wogan and members of the House Consumer Affairs Committee. My name is Loudon Campbell, and I'm an attorney with the Harrisburg office of the law firm of Eckert Seamans Cherin & Mellott, LLC. With me today is Kim Maddox from Pittsburgh. Kim is the Pittsburgh branch manager of Dial America, a telemarketing company with over 40 years experience in Direct Marketing.

I am pleased to have the opportunity to again appear before you to present testimony on House Bill 1089 on behalf of the Direct Marketing Association.

The Direct Marketing Association (DMA) is a national trade association founded in 1917. The DMA is headquartered in New York and has offices in Washington, D. C. It has 4,800 members who sometimes use the telephone in marketing a wide variety of goods and services. DMA's members include direct marketers from every business segment as well as the non-profit and electronic marketing sectors. Included are catalogers, Internet retailers and service providers, financial services providers, book and magazine publishers, book and music clubs, retail stores and industrial manufacturers.

In addition, many industry suppliers, such as advertising agencies, telephone marketers, computer service companies, printers, list companies, software developers, mailing-service companies, consultants, envelope manufacturers, and paper suppliers, also belong.

The DMA membership roster includes companies like AT&T, IBM, Time Inc., Mellon Bank, MicroSoft, R. R. Donnelley, Home Shopping Network, The New York Times, Prudential Insurance, Proctor & Gamble, and many other nationally recognized companies.

The DMA has 171 member companies headquartered in 90 Pennsylvania cities, as well as 119 additional member companies with operations in Pennsylvania.

The economic impact of the companies involved in direct marketing is significant. A study commissioned by the DMA estimates that 1998 sales revenue generated by direct marketers in Pennsylvania was over \$60 billion, with sales projections for 2003 estimated to exceed \$87 billion. The number of people

employed by direct marketers in Pennsylvania in 1998 is estimated to exceed 582,000, with 2003 projections to exceed 663,000 Pennsylvania jobs.

The DMA continues to oppose state “do-not-call” list legislation because DMA members already serve consumers in two important ways:

First, if a consumer asks not to be called, DMA members don’t call them. They are put on an in-house do-not-call list and neither the consumer’s name nor telephone number may be traded with any other company. This is federal law.

Secondly, DMA members support and pay for an industry service to consumers known as the Telephone Preference Service (TPS). A consumer may write to the TPS and be deleted from calling lists of all DMA member companies as well as many other national marketers. The TPS is free to consumers and is paid for by the industry--and has been for 20 years.

As of July 1, 1999, the use of the TPS list to delete consumers’ names and telephone numbers before a sales campaign is initiated is a condition of membership in the DMA.

When a consumer registers with TPS, the consumer's name, address, and telephone number are placed in a do-not-call file. This "delete file" is updated quarterly and made available to telephone marketers who choose to use it. The consumer's name remains in the TPS do-not-call file for five years.

As of January 2000, 174,295 Pennsylvania residential telephone numbers have been registered with the TPS. This is a significant increase from April 1999 when 141,961 numbers were registered.

Many companies that are not members of the DMA purchase the TPS list from the DMA. The DMA sells this list at cost to non-members. The list may only be used to remove names from marketing campaigns, and confidentiality is required.

The TPS is referenced in the customer guide section of almost every telephone directory. Literally hundreds of news articles have described the federal law and the TPS. Nearly every press release the DMA sends out describes consumers' services, including TPS and MPS (Mail Preference Service). Billing inserts from most telephone companies discuss the options, including TPS. Ann Landers and

Dear Abby and other “help” columns regularly inform consumers about TPS.

The DMA urges government agencies and consumer groups to inform consumers about the TPS.

In late 1998 and early 1999 the State of Vermont, with the assistance of many private sector businesses, engaged in a public awareness campaign to advise the public of the availability of the TPS as a means to reduce telemarketing calls.

The campaign also advised consumers of their rights under the Federal Telephone Consumer Protection Act to be placed on company-by-company do-not-call lists.

The result was that Vermont enrollments in the TPS increased by over 500 percent to include approximately 15% of all Vermont residential telephone customers. This demonstrates that a public education program can be effective.

In addition to the Pennsylvania Telemarketer Registration Act adopted in 1996, which House Bill 1089 proposes to amend, there are two federal laws that require a company to honor a consumer’s request not to be called again:

The Telephone Consumer Protection Act was passed by Congress in 1991. The Federal Communications Commission’s regulations implementing the Act went

into effect in 1992. Among the various provisions of the law, companies are required to maintain a “do-not-call” list and honor any requests not to be called again. When such a request is received, the requester may not be called again on behalf of the business for which the solicitation is made. A person’s name must be kept on the “do-not-call” list ten years.

There are certain exemptions from the Telephone Consumer Protection Act, including calls made on behalf of tax-exempt non-profit organizations, calls not made for a commercial purpose, and calls made to a consumer with whom the calling company has an established business relationship.

In 1995, the Federal Trade Commission (FTC) adopted the Telemarketing Sales Rule pursuant to the Telemarketing Consumer Fraud and Abuse Prevention Act adopted in 1994. The key provisions of the Rule require specific disclosures, prohibit misrepresentations, set limits on the times telemarketers may call consumers, prohibit calls after a consumer asks not to be called, set payment restrictions for the sale of certain goods and services, and require that specific business records be kept for two years.

The DMA supported both the Act and the FTC Rule. These federal laws were intended and implemented to preempt the states as far as interstate marketing is concerned. A U.S. Senate report on the 1991 Telephone Consumer Protection Act stated that "...states do not have jurisdiction over interstate calls. Many states have expressed a desire for federal legislation to regulate interstate telemarketing calls to supplement their restrictions on intrastate calls." Congress recognized the preemption problem for state enforcement of telemarketing statutes and specifically provided in the 1991 Act that more restrictive intrastate requirements or regulations would not be preempted by the Act. This illustrates the federal preemption of state regulation of interstate telemarketing calls. The result is that a state "do-not-call" law such as that proposed by House Bill 1089 will affect only Pennsylvania companies that make calls to Pennsylvania consumers. A law of such a limited application is neither practical nor helpful to Pennsylvania consumers or Pennsylvania businesses. In fact, it would seem to place Pennsylvania companies at a competitive disadvantage to out-of-state telemarketers.

Sellers now are required to maintain their own "do-not-call" lists, which are typically updated monthly. Many marketers utilize the TPS list which is typically



updated quarterly. If 50 states all adopted a requirement for “do-not-call” lists to be updated quarterly, companies would be required to manage and implement 216 lists per year. The DMA believes that maintaining compliance with all of these “list” requirements would be an inappropriate and unnecessary administrative burden. Because of the interstate nature of telemarketing, it makes much more sense for regulation to be imposed at the federal level.

In fact, the FTC has, since this Committee’s last hearing on this bill, invited consumers and other interested parties to review the “do-not-call ” provisions of the FTC telemarketing sales rule as part of the FTC’s statutorily required evaluation of the operation of the Telemarketing Sales Rule. Because the FTC is currently reviewing the very topic of this bill, the DMA believes that it would be premature for the Pennsylvania legislature to act until the FTC completes its detailed review and makes its recommendations to Congress on the need for changes to the federal law or the Telemarketing Sales Rule. Attached to my printed testimony is a copy of the FTC notice regarding their review of the “do-not-call” provisions of the Telemarketing Sales Rule.

The committee should note that eight states have recognized that state “do-not-call” lists are inappropriate at this time and have defeated legislative attempts to enact state “do-not-call” lists in the past year. These include Virginia, South Dakota, Colorado, Washington, Maryland, New Hampshire and Wyoming. The West Virginia legislation was referred to a study commission.

Additionally, many questions remain about the costs to government, businesses and consumers if a state “do-not-call” list is implemented. The TPS service, however, has no cost to government or consumers.

Effective distribution of products and services is one key element that distinguishes the United States from all other nations. There are consumers in Pennsylvania who need or want the goods and services offered by companies engaged in direct marketing. The DMA believes that your constituents would rather decide who may call and who may not.

Consumers have options to avoid unwanted calls: (1) use technology such as an answering machine, telephone company services, or caller ID; (2) utilize federal laws requiring sellers to maintain an in-house do-not-call list which is effective

for ten years; (3) utilize the TPS without charge in order to receive fewer national sales calls.

On behalf of the Direct Marketing Association and its 171 members headquartered in Pennsylvania, I urge you to reject House Bill 1089 and the concept of a state “do-not-call” list.

Thank you for the opportunity to appear and for your attention.

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