sources or refuse all such calls. Given the structure of the TCPA and the very large number of businesses engaged in telephone marketing, it is simply impossible to develop a system that enables consumers to screen some, but not all, calls. If the Commission were to adopt this regulatory approach, it would, in effect, reach the empirically-unfounded and profoundly unfair conclusion that all telephone marketing is unacceptable to all consumers.[12/]

32. In addition, national or regional databases will not be easy for the consumer to use. Of necessity, this system requires the existence of a substantial bureaucracy. Systems of enrollment will have to be established. Problems of data entry and verification will have to be addressed. The system will inevitably involve paperwork and bureaucratic red tape, the burden of which will fall on the consumer.

33. Second, this regulatory option will also be very difficult for marketers to administer and for the Commission and the courts to enforce. Under such an approach, responsibility for compliance with the TCPA is distributed between the marketer and the agency administering the database. In any administrative inquiry initiated by the Commission, or in any state court action,

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12/ A sharp distinction must be drawn between federally-mandated databases and voluntary, industry-wide services such as TPS. The former is designed as the primary vehicle for screening unwanted calls. In that context, the inflexibility of the system is highly problematic. By contrast, TPS is designed to complement company-specific systems and serves as a safety net for the small segment of the population that object to all calls; because it is complementary to more flexible alternatives, TPS does not infringe upon either consumer interests or legitimate business practices.

the marketer would be able to show, of course, that the calling list used was indeed matched against the national or regional database; but, absent access to the working records of the database administrator, it will be impossible for the marketer to show (or even know) whether an unwanted call was made because of a timing problem in the entry of the consumer's name on the list, because of an entry error, because a consumer previously entered on the list has moved, or for some other reason. Any system that involves a third-party agency in the process of defining calls deemed annoying by some consumers will dilute responsibility and complicate enforcement.

34. National or even regional databases will also be very difficult for small marketers to readily administer. Large marketers or their telephone service agents probably have, or can readily obtain, the requisite computer capacity to perform on-line list matching. Smaller marketers will not be able to do so; and, as is the case in Florida, will be compelled to perform the match manually from a paper record compiled by the database administering agency. This increases the probability of error, as well as cost and delay in fulfillment of a consumer's wishes.

35. Third, a system of regulation based upon a national or regional database complicates the regulatory task of implementing TCPA. It would require that the terms "established business relationship" and "residential subscriber" be defined. As we have narrated, there is no single accepted meaning of the term

"established business relationship." Any such definition adopted by the Commission will, out of necessity, be arbitrary: if too broad, it will defeat the basic purposes of the TCPA; if too narrow, it will impinge upon legitimate business practices. A similar problem exists with respect to the status of residential telephone numbers used for business purposes.

36. Above all, the establishment, implementation and operation of national or regional databases involves staggering costs to the economy. In his testimony before the Senate Commerce Committee, Chairman Sikes estimated that a national database would entail a start-up cost of about $70 million and an ongoing operating cost of $20 million per year. See, Hearing on S.1410, S.1462, S.857 before the Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation, (Statement of Alfred C. Sikes, Chairman, FCC at 3). We believe this estimate to be very much on the low side. Among other things, it does not include indirect costs incurred by those consumers who wish to enroll in the database, nor does it include the administrative costs that marketers and their agents will incur in the establishment and maintenance of compliance systems. However, even at the levels estimated by Chairman Sikes, the development of a national database would be prohibitively expensive. Even if a national or regional database system were otherwise effective and administrable, such a regulatory approach simply cannot be reconciled with the principle that implementation of the TCPA should be carried out at

"the least possible cost to the economy." Presidential Signing Statement, S.1462.[13/]

37. Special Directory Marking; Network Technologies. Virtually all of the problems identified with respect to national or regional databases apply equally to these alternative regulatory options.[14/] Both systems force consumers to an all-or-nothing choice, thereby impinging upon the rights of subscribers who find some, but not all, telephone solicitation calls to be an annoyance. Both systems involve costs and administrative problems for consumers. Because implementation is, at least in part, in the hands of a third-party -- a local exchange carrier or the telephone directory publisher -- the problems of administration and enforcement we have noted with respect to the national or regional databases would arise under these regulatory options as well.

38. Even if technologically and economically feasible, the technology-based "solution" may well be unlawful: it is based upon the premise that all calls bearing the "telemarketer prefix" would be blocked at the central office; this would make it impossible for marketers to contact customers with whom they have an "established business relationship" in contravention of the terms of the TCPA.

13/ Because of the problems with database-type systems, the more modern approach to state regulation of unwanted calls has involved company-specific, do-not-call requirements. See, S.C. Code Ann. § 16.17-445(b)(3); Tex. Rev. Civ. Stat. Ann. Art. 1446 §§ 119, 120 (Vernon 1991); New York S.B. 7690 (1992).

14/ In fact, they are not really alternatives, see discussion infra ¶40.

39. With respect to an approach based upon special directory markings, the NPRM itself raises a central practical, if not legal, problem: "[i]t is not clear how such a system would be applied to national telemarketers." NPRM at ¶31. The question is extremely well-taken. Several states have regulatory systems based upon special directory markings for intrastate calls. Although such requirements are not, as a legal matter, applicable to out-of-state marketers, many national marketers do seek to comply. They have experienced great difficulty, and cost, obtaining access to the "asterisk list" -- the list of subscribers who have been identified by a special mark as desiring not to receive such calls.[15/]

40. A system based upon special directory markings can be made operational at the national level only if some agency compiles the special directory lists from all of the telephone directories in the United States. The same problem exists with the technology-based solution. In order to avoid "wasted" -- i.e., blocked -- calls, national marketers would need a compilation of all consumers who have requested blocking from their local exchange carriers. Thus, special directory markings and network technologies are not separate regulatory options at all. They are simply variations on the utterly unworkable and unsound third-party database option.

15/ In part, because of the difficulties out-of-state marketers face in attempting to comply with state special directory marking rules, the states have begun to recognize that company-specific, do-not-call requirements are the preferred regulatory option. See discussion supra n.13.

41. Time-of-Day Restrictions. Even assuming that it is within the Commission's power to implement the TCPA on the basis of time-of-day restrictions, there are compelling reasons not to select this choice.[16/] The first and foremost problem of reliance upon time-of-day restrictions is that this regulatory regime simply is not responsive to the fundamental purpose of Section 227(c): For those consumers who do not wish to receive a call from a particular marketer, the basic problem is not the time of the call but the fact of the call; time-of-day restrictions simply do not address this problem. It is true that, under the TCPA, time-of-day restrictions could be combined with one of the other alternatives enumerated. However, such a combination would make time-of-day restrictions at best redundant; at worst, and more probably, it would make the whole regulatory framework both

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16/ We recognize that, by the terms of Section 227(c)(1)(A), the range of "alternative methods and procedures" open for Commission consideration is relatively wide open. It is noteworthy, however, that there is no discussion of time-of-day restrictions as a possible means of implementing the do-not-call provision of the TCPA in the legislative reports; and there was no significant discussion of time-of-day restrictions during the course of the hearings on the bills. It is quite clear, then, that neither the Congress nor the participants in the legislative process contemplated that time-of-day restrictions would be included among the regulatory options permitted by the TCPA.

irrational[17/] and unduly intrusive upon legitimate business practices.

42. Fundamentally, a regulatory framework that involves time-of-day restrictions founders because it assumes that there is a national, generally-accepted understanding of what constitutes reasonable calling hours. Given the complexity and diversity of American society and the American economy, no such consensus exists. The reality is that acceptable calling hours are dependent upon consumers' lifestyles.[18/] These differ not only from region to region, but within regions and within different demographic subsets of a community. Moreover, as the Commission has become aware in other contexts, lifestyles may not be constant over time. See,

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17/ Because of the structure of the TCPA, a time-of-day restriction (whether alone or in combination with an alternative method of implementation) would not be applicable to business calls or to calls made to residential consumers with whom the marketer has an "established business relationship." In these circumstances, the adoption of a time-of-day restriction implies that marketing calls exempt from the requirements of Section 227(c) may be made at any hour, while calls subject to the Act can be made only during the regulatory established time periods. This bizarre but unavoidable analytic result would bring the whole regulatory framework into disrepute. We recognize, of course, that responsible marketers engaged in making marketing calls exempt from time-of-day restrictions would almost certainly comply voluntarily. Nonetheless, the Commission should avoid regulatory options that implicate the Law of Unintended Consequences.

18/ To take a simple example, the "normal day" in rural and agricultural areas and communities typically begins well before 9 a.m. and, at least in certain months, ends well before 9 p.m. For farmers who do not wish to receive telephone solicitations from some marketers, as well as those who do, the 9 a.m. to 9 p.m. standard suggested by the Commission, although facially reasonable, is both under- and over-inclusive.

e.g., Kelly Broadcasting Co., 6 F.C.C. Rcd 5510 (1991) (Waiver of Prime Time Hours to reflect changing lifestyles).

43. It is not our contention that telephone marketers must have the untrammeled right to make telephone solicitation calls at any hour or all hours. To the contrary, DMA's Telephone Guidelines specifically address the issue of reasonable calling hours. Article 4 of the Telephone Guidelines specifically requires all marketers (including those who would be exempt from the TCPA) to refrain from making calls

> during hours which are unreasonable to the recipients of the calls.

(Emphasis added.) This standard explicitly recognizes that "good business etiquette" (NPRM at ¶33), as well as the economics of direct marketing, require that calls be made only during acceptable hours; but, the standard further recognizes that what is or is not "reasonable" depends upon the audience to be reached. It is our contention that the question of reasonable calling hours can be resolved through, and only through, self-regulation and the dynamics of the marketplace. The fundamental problem with the use of time-of-day restrictions as a part of an overall regulatory program for implementation of TCPA is not that it offers "little, if any, additional benefits." NPRM at ¶33. It offers no benefits at all.

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44. For these reasons, the DMA respectfully maintains that there is only one "efficient and effective" means of implementing

the TCPA's provisions designed to protect consumers from unsolicited telephone calls to which they object: a regulatory framework based upon company-specific, do-not-call programs, reinforced by voluntary, self-administered, industry-wide lists such as TPS. Both in its own terms, and when contrasted with the alternatives (or any combination of the alternatives), company-specific, do-not-call requirements best suit the purposes of the TCPA and the need to avoid restriction of legitimate business practices and imposition of unwarranted cost upon the American economy.

45. The choice of a regulatory system based upon company-specific, in-house, do-not-call programs is reinforced by one further consideration. As the Telephone Guidelines and Consumer Awareness Brochure make abundantly clear, DMA members are firmly committed to the proposition that consumers are entitled to be free from telephone calls, or any other form of advertising, to which they object. We may concede that there is some legitimate governmental interest in establishing a framework which provides reasonable assurance that rights of consumers to be free from unwanted calls are observed. Nonetheless, implementation of the TCPA is not without First Amendment implications. At its most basic level, implementation of this statute entails a balancing of the advertiser's right to speak with the consumer's right to refuse to listen to the message. As a matter of constitutional policy, if not constitutional law, it is therefore incumbent upon the

Commission to select that regulatory option which furthers the governmental interest underlying the TCPA by the most "reasonable fit" between the means chosen and the interest to be served. Board of Trustees of State Univ. of N.Y. v. Fox, 492 U.S. 469, 480 (1989).[19/] Because the regulatory approach based upon company-specific, do-not-call systems offers the greatest flexibility to marketer and consumer, and is the most readily administrable, enforceable and least-costly of the options available, it provides the most "reasonable fit." We urge its adoption.

III.
ALL ADRMP CALLS THAT DO NOT TRANSMIT AN UNSOLICITED ADVERTISEMENT SHOULD BE EXEMPTED FROM THE OPERATION OF SECTION 227.

46. Section 64.1100(c)(2) of the draft rules proposes to permit the use of ADRMPs to transmit any message "that is made for commercial purpose but does not include the transmission of any unsolicited advertisement."[20/] We endorse this proposal. However,

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19/ For purposes of this proceeding, the question whether Fox articulates a new test for determining the constitutionality of regulations limiting so-called commercial speech is academic: the alternatives to company-specific, do-not-call systems all suffer from serious constitutional infirmities, see, e.g., Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 72 (1983); and, therefore, regulations based upon company-specific, do-not-call systems not only "fit" the purposes of the TCPA but are also the "least intrusive" of the choices available.

20/ The general prohibitions and restrictions imposed by Section 227(b) on the use of automated telephone equipment and ADRMPs are basically in harmony with industry practices as embodied in the Telephone Guidelines. Plainly, if the marketer obtains "permission" by means of a "live operator" before playing a prerecorded solicitation message (as the Telephone Guidelines require, see discussion supra ¶8), there is "prior express consent" within the meaning of Section 227(b)(1)(B); because the Telephone

(continued...)

the scope of the exemption requires clarification. The Commission should emphasize that it is not the content of the message that brings such an ADRMP call within the exemption but, rather, the absence of an unsolicited advertisement. It should also make plain that the mere mention of a product or service in a trailer to, or as part of, such calls is not disqualifying.

47. The category of calls proposed to be exempted by Section 64.1100(c)(2) does not infringe upon the underlying purposes of the TCPA for several reasons. The overwhelming preponderance of these ADRMP calls are made by organizations that have or have recently had a relationship with the called party. Sometimes, as the NPRM notes (NPRM at ¶11), the recipients are employees or members of the calling organization. In other applications, the recipient of the call is a consumer who has purchased a product and is awaiting advice for pickup or shipment, or has expressed an interest in being notified when the product is available so that it can be purchased. In still other applications, these calls are made to remind customers that arrangements they have with the merchant have expired or will soon expire. By their very nature, ADRMP calls

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20/(...continued)
Guidelines require up-front identification of the caller, prohibit random or sequential dialing, and require automatic dialing equipment to promptly disconnect, they are also in harmony with Section 227(b) and 227(d)(3). Finally, the DMA guideline regarding ADRMPs applies to business-to-business as well as consumer calls, mooting the Commission's discussion of this question. See NPRM at ¶¶ 18, 19. Therefore, DMA is in general agreement with the basic structure of the Commission's approach to implementation of this aspect of the TCPA.

that do not contain unsolicited advertisements are not made to strangers. In addition, although the nature of the messages transmitted varies widely depending upon context, the primary purpose of ADRMP calls made without unsolicited advertisements is to transmit information that the marketer has independent and objective reason to expect the consumer to want and to act upon. Indeed, the failure to make such a call may do the customer a disservice. For example, failure to inform the consumer that the service contract he purchased is about to expire may result in harm.

48. Categorically, therefore, ADRMP calls without unsolicited advertisements do not hold the potential for annoyance. All such calls are, in some sense, "commercial" and some of such calls may be "more commercial" than others. It is not, however, the content of the specific message that categorizes non-annoying ADRMP calls. It is, rather, the absence of an "unsolicited advertisement." The Commission should make it clear that -- so long as an ADRMP call does not contain an unsolicited advertisement -- the scope of the exemption is not controlled by, and the rule will not be enforced with respect to, the content of the message.

49. It is also necessary for the Commission to provide guidance as to the meaning of the term "unsolicited advertisement." We are well aware that the attempt to codify, in regulation, a definition of "unsolicited advertisement" is virtually impossible and ill-advised. Nonetheless, some policy guidance is necessary

and desirable to avoid confusion with respect to this exemption and to facilitate administration and enforcement of the rule. For purposes of the provisions of the TCPA dealing with the use of facsimile machines as an advertising vehicle, Congress defined the term "unsolicited advertisement" to mean material advertising the "commercial availability or quality of any property, goods or services." See Section 227(a)(4). It appears that the drafters of the proposed Commission's rules may have had this definition in mind in framing the language of Section 64.1100(c)(2). However, this definition is not self-executing and, absent further explanation, could result in confusion, administrative difficulties, and inadvertent restriction on legitimate business practices that do not annoy consumers.

50. Accordingly, the Commission should make it clear, as a matter of policy, that references to products or services contained in an ADRMP call do not automatically disqualify the call from exemption under Section 64.1100(c)(2). Rather, the Commission should confirm that calls permitted by this subsection of its rules may identify, refer to, or describe the caller or its products or services (including value neutral designations, slogans or brand or trade names), so long as the announcement, or reference to the product or service, does not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. Cf. Springtown Educational

Broadcasting Foundation, Release No. DA92-496 (issued Apr. 20, 1992).

CONCLUSION

51. For these reasons, the DMA respectfully submits that the Commission should adopt a regulatory framework based upon company-specific, do-not-call lists as the means for implementing those provisions of the TCPA that relate to calls deemed by some consumers to be objectionable. The Commission should, further, clarify the scope of the proposed exemption for ADRMP calls that do not contain comparative or qualitative descriptions, price information or similar promotional messages.

Respectfully submitted

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May 26, 1992

ATTACHMENT A

DIRECT
MARKETING
ASSOCIATION
GUIDELINES
for...

Marketing By Telephone

dma™

The structured use of the telephone to purchase or sell products or services, or to obtain or give information to businesses and residences, is known as telemarketing. "Inbound" telemarketing programs enable customers to call companies to place orders or receive product and service information. "Outbound" telemarketing programs are those in which companies call customers, and potential customers, to inform them of offers that may be of interest and to provide service information. For the purposes of these guidelines, all telephone calls made for marketing purposes will be referred to as contacts. Those persons who are called will be referred to as customers.

More and more businesses today are using telemarketing to meet the needs of their customers. Telemarketing is a people-oriented marketing medium that enables companies to target their products and services to customers who would be most interested in them.

The Direct Marketing Association's Guidelines for Marketing by Telephone are intended to provide individuals and organizations involved in direct telephone marketing with accepted principles of conduct that are consistent with the ethical guidelines recommended for other marketing media. These specific guidelines reflect the responsibility of DMA and telephone marketers to the customer, the community and industry. Telephone marketers should also be aware of DMA's Guidelines for Ethical Business Practice, the more comprehensive Guidelines for all direct marketing.

The Guidelines are self-regulatory in nature. Telephone marketers are urged to honor them in spirit and in letter.

These Guidelines are also part of DMA's general philosophy that self-regulatory measures are preferable to governmental mandates whenever possible. Self-regulatory actions are more readily adaptable to changing technologies, economic and social conditions. Further, self-regulation encourages widespread use of sound business practices.

Special recognition should be given to the Telephone Marketing Council which worked with the DMA Ethics Committees in writing and approving these Guidelines.

PROMPT DISCLOSURE/ IDENTITY OF SELLER

Article 1

When speaking with a customer, telephone marketers should promptly disclose the name of the sponsor, the name of the individual caller, and the primary purposes of the contact.

All documents relating to a telephone marketing offer and shipment should sufficiently identify the full name and street address of the seller so that the customer may contact the seller by mail or by telephone.

HONESTY

Article 2

All offers should be clear, honest, and complete so that the customer will know the exact nature of what is being offered and the commitment involved in the placing of

an order. Before making an offer, telephone marketers should be prepared to substantiate any claims or offers made. Advertisements or specific claims which are untrue, misleading, deceptive, fraudulent, or unjustly disparaging of competitors should not be used.

No one should make offers or solicitations in the guise of research or a survey when the real intent is to sell products or services or to raise funds.

TERMS OF THE OFFER

Article 3

Prior to commitments by customers, telephone marketers should disclose the cost of the merchandise or service and all terms and conditions, including payment plans, refund policies, and the amount or existence of any extra charges such as shipping and handling and insurance.

REASONABLE HOURS

Article 4

Telephone marketers should avoid making contacts during hours which are unreasonable to the recipients of the calls.

USE OF AUTOMATIC EQUIPMENT

Article 5

When using automatic dialing equipment, telephone marketers should only use equipment which allows the telephone immediately to release the line when the called party disconnects.

ADRMPS (Automatic Recorded Message Players) and pre-recorded messages should be used only in accordance with tariffs, state and local laws, and these Guidelines. When a telephone marketer

places a call to a customer for solicitation purposes, and desires to deliver a recorded message, permission should be obtained from the customer by a live "operator" before the recorded message is delivered.

TAPING OF CONVERSATIONS

Article 6

Taping of telephone conversations made for telephone marketing purposes should not be conducted without legal notice to or consent of all parties or the use of a beeping device.

NAME REMOVAL

Article 7

Telephone marketers should remove the name of any individual from their telephone lists when requested directly to do so by the customer, by use of the DMA Telephone Preference Service name-removal list and, when applicable, the DMA Mail Preference Service name-removal list.

MINORS

Article 8

Because minors are generally less experienced in their rights as consumers, telephone marketers should be especially sensitive to the obligations and responsibilities involved when dealing with them. Offers suitable only for adults should not be made to children.

MONITORING

Article 9

Monitoring of telephone marketing and customer relations conversations should be conducted only after employees have been informed of the practice.

PROMPT DELIVERY

Article 10

Telephone marketers should abide by the FTC's Mail Order Merchandise (Thirty-Day) Rule when shipping prepaid merchandise. As a normal business procedure, telephone marketers are urged to ship all orders as soon as practical.

COOLING-OFF PERIOD

Article 11

Telephone marketers should honor cancellation requests that originate within three days of sales agreement.

RESTRICTED CONTACTS

Article 12

Telephone marketers should remove the name of any customer from their telephone lists when requested by the individual. Marketers should use the DMA Telephone Preference Service name-removal list and, when applicable, the DMA Mail Preference Service name-removal list. Names found on such suppression lists should not be rented, sold, or exchanged except for suppression purposes.

A telephone marketer should not knowingly call anyone who has an unlisted or unpublished telephone number except in instances when the number was provided by the customer to that marketer.

Random dialing techniques, whether manual or automated, in which identification of those parties to be called is left to chance should not be used in sales and marketing solicitations.

Sequential dialing techniques, whether a manual or automated process, in which selection of those parties to be called is based on the location of their telephone numbers in a sequence of telephone numbers should not be used.

TRANSFER OF DATA

Article 13

Telephone marketers who receive or collect customer data as a result of a telephone marketing contact, and who intend to rent, sell, or exchange those data for direct marketing purposes should inform the customer. Customer requests regarding restrictions on the collection, rental, sale, or exchange of data relating to them should be honored.

Names on the DMA Telephone Preference Service name-removal list should not be transferred except for suppression purposes.

LAW, CODES, AND REGULATIONS

Article 14

Telephone marketers should operate in accordance with the laws and regulations of the United States Postal Service, the Federal Communications Commission, the Federal Trade Commission, the Federal Reserve Board and other applicable Federal, state, and local laws governing advertising, marketing practices, and the transaction of business by mail, telephone, and the print and broadcast media.

DMA Ethics and Consumer Affairs Department

In its continuing efforts to improve the practices of direct marketing and our relationship with customers, DMA sponsors several activities in its Ethics and Consumer Affairs Department. Activities are coordinated by a professional Director of Ethical Practices.

Ethical Guidelines are maintained, updated periodically, and distributed to the direct marketing industry.

A Committee on Ethical Business Practice investigates and examines mailings and offerings made throughout the direct marketing field.

An Ethics Policy Committee initiates programs and projects directed toward improved ethical awareness in the direct marketing area.

"Dialogue" meetings between direct marketing professionals and consumer affairs and regulatory representatives facilitate increased communication between the industry and its customers.

MOAL (Mail Order Action Line) assists consumers in resolving mail order complaints. MPS (Mail Preference Service) offers consumers assistance in decreasing the volume of advertising mail they receive. TPS (Telephone Preference Service) offers a decrease in home telephone sales calls.

For additional information contact:
Ethics Department
Direct Marketing Association, Inc.
6 East 43rd Street
New York, NY 10017-4646
(212) 768-7277

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1101 17th Street, NW
Washington, DC 20036-4704
(202) 347-1222

8/91

TIPS FOR TELEPHONE SHOPPING

How to enjoy a convenient, easy way to shop, and avoid possible problems.

AT&T
American Transtech

Prepared as a public service by the Direct Marketing Association, New York, N.Y., and AT&T American Transtech, Jacksonville, Fla.

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SHOPPING BY TELEPHONE IS EASY, CONVENIENT AND RELIABLE

Telephone shopping allows you to:

- Shop 24 hours per day, seven days per week.
- Comparison shop by calling several sources for the product or service you are considering. Many companies offer sale items for phone customers only, so be sure to check.
- Renew a subscription to your favorite magazine, museum, or symphony; or make a donation to a non-profit organization.
- Order merchandise quickly, paying for your order by charge account or credit card.
- Locate unusual and hard-to-find products. This is especially convenient for those with unusual hobbies or interests.
- Receive assistance and detailed information before and after you purchase merchandise or a service.
- Call toll-free 800-numbers with ordering and customer service questions. Most companies have toll-free numbers; simply call 1-800-555-1212 for directory assistance.

WHEN A COMPANY CALLS YOU

A company or organization with which you have done business in the past may contact you to offer a product or service, request a donation, or ask questions about your satisfaction with their service.

If you are called at an inconvenient time:

- Simply ask the representative to call back at a specified time or mail you information to consider at your leisure.

If you prefer not to be contacted by telephone:

- Explain that you are not interested and ask to be removed from their calling list. Most businesses do not want to annoy their customers or potential customers and will do as you ask.

If the caller is rude and will not stop talking when you say you are not interested, politely restate that you are

not interested, tell them to remove your name from their calling list, and then:

- Hang up the telephone.

COMPUTERIZED CALLS

The Direct Marketing Association believes that businesses that use recorded messages should do so only when a live operator announces the call, and the customer has an opportunity to say they are willing to listen to the recorded message. If you do not wish to listen to a recorded message, hang up.

WHAT ABOUT 900 NUMBERS?

It costs you money to call a 900-number — anywhere from 50 cents to $50 per call. Reputable 900-number marketers offer services or products that are commensurate with the charge for the call. Here are some tips to keep in mind before placing a 900-number call:

- Know in advance the cost of the call or the charge per minute. Do not respond to ads that do not state these costs. The Direct Marketing Association supports the position that the call should begin with a free message that clearly discloses the cost of the call, and allows the consumer to hang up before being charged.
- Do not call a 900-number to receive a "free" gift. If the item was "free," then the company would offer an 800-number.
- Some companies promise "guaranteed" bank credit cards or cash loans. You may be billed up to $50 for general information, that can be obtained elsewhere without charge, on how to apply for a card or loan.
- Make sure children understand that 900-numbers cost money and that they should not call without adult permission.
- If you have a problem with a 900-number, do not redial the number to complain. Call your local telephone company and explain the problem.

If your local phone company can not resolve the problem, complain directly to the long distance company indicated on your bill as the 900-number service provider (AT&T, MCI, US Sprint, or Telesphere). If you are not sure what long distance carrier is involved, your local phone company can help. The toll-free numbers for the four major carriers are:

AT&T: 800-222-0300 (unless otherwise specified)
MCI: 800-444-3333
US Sprint: 800-366-0707
Telesphere: 800-346-6329

QUICK REMINDERS WHEN SHOPPING BY PHONE

The Direct Marketing Association and its 3,600-plus member companies offer the following tips to ensure a smooth telephone transaction:

1. Check the company's guaranteed satisfaction and return policy before ordering. Product warranties can be obtained before ordering. Simply ask.
2. Know the company with which you are dealing. If you feel you need more information about the company before placing an order, check the company's local Better Business Bureau or your consumer protection agency (listed in the telephone book or with directory assistance).
3. Never give your bank checking account number to anyone over the telephone, even if you make the call. Some fraudulent operators have requested this information from consumers, claiming it is for "verification purposes." Don't be fooled!
4. Save yourself time and/or money by having the information you need ready before you call such as merchandise order number and description, name and shipping address, and your charge account or credit card number with expiration date.
5. Keep a record of your order until you receive the product or have used the service. Retain the company name, address and phone number and a record of any payments you have made.

6. If you have questions about the product or service, even after you have used the merchandise, call the company's customer service number. They are there to help.
7. Report harassing, annoying, or obscene calls (which may start under the guise of a sales call) to the business office of your local telephone company.

HOW YOU ARE PROTECTED WHEN SHOPPING BY PHONE

The Federal Trade Commission (FTC) Fair Credit Billing Act helps consumers solve problems and ensure fair handling of credit card accounts when purchases are made by telephone.

When returning merchandise or contesting charges, contact the mail-order company in writing to request that credit be issued to your account. The mail-order company is required to provide a refund within seven business days after receiving your request. Refunds are to be made in the manner in which you paid for the merchandise. If you paid by credit card, and your credit card statement does not show the credit within one billing cycle after informing the merchant of your return, contact the bank issuing the card for assistance.

Direct Marketing Association, established in 1917, maintains the Guidelines for Ethical Business Practice series, which establish standards for direct marketing practitioners that protect the consumer. DMA regularly reviews new marketing techniques to ensure protection of consumer's rights.

TELEPHONE NAME REMOVAL SERVICE

Legitimate businesses want to reach only those consumers who are interested in their products or services. If you are not interested in being contacted by national businesses and organizations, you can write to the Direct Marketing Association's Telephone Preference Service (TPS) to have your name removed from national telephone sales call lists. DMA's TPS is recognized by the U.S. Office of Consumer Affairs, U.S. Postal Inspectors, Council of Better Business Bureaus, and Federal Trade Commission, among others, as the consumer resource for name removal from national telephone sales lists. Requests must be made in English.

Simply provide your complete name, full address, and telephone number (including area code) in writing to:

Telephone Preference Service
Direct Marketing Association
11 West 42nd Street
P.O. Box 3861
New York, NY 10163-3861

TPS, established in 1985, will not affect sequentially-dialed computerized calls or calls from local organizations.

IF YOU NEED FURTHER ASSISTANCE

The Direct Marketing Association's Mail Order Action Line (MOAL) was established in 1971 to help consumers who are having a problem with a particular mail or telephone transaction and have not been able to resolve it themselves. Requests must be made in English.

Consumers can request assistance from MOAL, a free service, by writing to:

Mail Order Action Line
Direct Marketing Association
6 East 43rd Street
New York, NY 10017-4646

Clearly state the details of the problem (the item ordered, order date, method of payment, company name, address and phone number, etc.). Photocopies of material that substantiate the complaint should also be included (such as cancelled check, credit card invoice, etc.).

Shopping by telephone can be an enjoyable experience. Just remember the tips in this booklet.

Direct Marketing Association, Inc.
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New York, N.Y. 10163-3861

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ATTACHMENT C

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TELEPHONE PREFERENCE SERVICE

We're the 2,700 companies that compose the Direct Marketing Association (DMA). We're in the business of selling products and services directly to people, through various channels.

Experience has shown us that many people enjoy receiving information in their homes over the telephone—information about subjects that interest them or things they may need or want. Magazine subscriptions, savings and retirement plans, life insurance...millions of people spend billions of dollars annually shopping over the phone.

However, we also know that some people do not like to receive telephone solicitation calls at home. To help those people, we have been offering to do our best to reduce the number of calls they receive, through a program called Telephone Preference Service. Computers have made it possible for many national advertisers to remove specified names from their lists, and the many companies that participate in Telephone Preference Service are eager to do so upon request.

So, if you would like to receive fewer advertising phone calls, just use the coupon below to let us know. We'll try to stop as many as possible by advising telephone marketers of your wishes.

After a few months, Telephone Preference Service will reduce the number of home telephone solicitation calls you receive, though local as well as small businesses do not participate in the program.

Name _____

Street _____ Apt. _____

City _____

State _____ ZIP _____

Telephone (including area code) _____

Variations of my name _____

_____

_____

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Post Office will not deliver without stamp