

# Telemarketing and Individual Rights

by Scott McPherson

**D**o Americans have a right *not* to be called on the telephone? According to new rules laid down by the Federal Trade Commission (FTC), they do. And as in all cases where the government manufactures “rights” seemingly out of thin air, this latest plan to forcefully interject itself into the middle of people’s relationships is destined to be as morally and practically flawed as the rest.

The furor over telemarketing has been building for years. In response, at least 27 states have created, or are considering creating, “do-not-call” lists, which telemarketing firms are required by law to respect. Now, the federal government has decided to weigh in with the FTC’s own nationwide list designed to shield consumers from unwelcome telephone sales. Even the White House joined the fray, releasing a statement saying, “Time with family is a precious commodity, and families should be given the tools they need to help prevent unwanted calls from telemarketers.”<sup>1</sup>

Under the new guidelines, consumers who do not want to receive such calls would be able to place their names and telephone numbers on the national registry using the Internet or a toll-free number. They would have to renew every five years. Telemarketing firms that continue to call people once

they’ve been put on the list would face a fine of up to \$11,000 per violation.

Industry spokesmen claim the new rules will destroy their businesses and are actually contrary to what many consumers want. Some, like Direct Marketing Association president and chief executive Robert Wientzen, even argue against this new constraint on the grounds that it comes at “the substantial cost of restricting firms’ protected speech under the First Amendment.” Either way, according to a report in the *Washington Times* last December, “Telemarketers say . . . they are bracing for the worst.” “It’s extremely scary,” said Tom Rocca, chairman of the American Teleservices Association, which represents 2,200 telemarketers. “The more people on that list, the more it will affect jobs and revenue.” To make matters worse, the Federal Communications Commission (FCC) is contemplating its own “do-not-call” list under the 1991 Telephone Consumer Protection Act.<sup>2</sup>

The reaction from consumers is understandably mixed. “It’s very annoying,” one Chicago woman said about telephone solicitation. “You’re like a prisoner in your own house not knowing whether to answer your phone or not.”<sup>3</sup> This statement most assuredly reflects the sentiments of millions of people in this country. Still, the success of telemarketing as a sales tool also cannot be ignored. Telemarketers closed 185 million deals with consumers in 2001, to the tune of \$296 billion, and sales to businesses raised

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even more revenue. This clearly shows that quite a few people indeed welcome the opportunity to be solicited by phone.

Yet the important question is not about which competing interest deserves to prevail. Telemarketers argue from the position that the necessity of protecting their industry justifies the continued use of this sales technique, or at least that they have a “right” of their own deserving protection. On the other hand, privacy and consumer-protection advocates refer to telemarketing as an intrusion, and speak almost as if the calls were a physical invasion. FTC chairman Timothy Muris seemed to liken the plight of consumers to a besieged populace. “Help is on the way,” he said, referring to the coming “do-not-call” list.<sup>4</sup>

Despite all the arguments for and against this new regulation, the real issue at stake is not privacy, economic survival, or even free speech, but property rights. Somehow over the last century people have come to think of themselves as the *owners* of the telephone lines coming into their homes. They aren’t. The payment made to a local telephone-service provider is for *rental*, not ownership, of the line. The phone company is the actual owner. Like cable TV or electricity, individual Americans trade with the suppliers of these highly coveted commodities under a contractual relationship of fee for service, not as purchasers of power, telephone, or cable lines.

## The Right to Ask

When people invoke their “right” to not be interrupted by sales calls, they fail to realize that their complaint is not one to be handled by the government, but by, if anyone, the telephone company. No one has the right to demand that government regulators compel Burger King to take ketchup off the Whopper. They merely have the right to ask this for themselves. In a free, market-based society, businesses make money by serving their customers, and in that sense, the customer reigns. The extent of consumers’ actual claim over business products, though, is determined by the terms of the contract

negotiated between the parties concerned. It’s highly doubtful that any consumer of telephone service has received a guaranty from his local phone company that sales calls will not be forthcoming.

How, then, could customers protect themselves from telemarketers? First, it should be understood that when someone gets a telephone, like a television, he is opening a portal to the outside world. The wonderful convenience represented by that often-overlooked fact is taken for granted today. Without a telephone it would take a healthy set of lungs to summon an ambulance. A telephone can also mean the sound of a loved one’s voice from thousands of miles away at the touch of a few buttons. Simply put, without the telephone, an unbelievable number of the riches and pleasures of our creative society would be literally out of reach for most people. It is presumptuous for someone to enjoy the immeasurable advantages of a culture built around this and other inventions, while assuming that he should be able to exercise a line-item veto over any perceived drawbacks.

Even so, the marketplace will ultimately provide the kind of protection that people want from untimely telephone interruptions, and to some extent it already does so. The Direct Marketing Association began a private “do-not-call” list in 1985 for use by the telemarketing industry; it has 7.5 million subscribers. Another private firm, Illinois-based Private Citizen, Inc., assists consumers in removing their names from telemarketing lists.

For those who want to take more immediate action, Baby Bells are now offering “Privacy Manager,” a service (for a small monthly fee) in which the phone company’s computer intercepts any call that provides no caller ID data, requests identification, and then relays the information to the resident, who has the option of refusing the call, accepting it, or sending a computer message instructing that the telemarketer not call again.

Also available is the Telezapper, a tiny computer that hooks up to your phone and automatically “zaps” your number from the

computer database of any caller using an auto-dialing system (popular among telemarketing firms).

Of course, caller ID allows us to know who is calling before we even pick up the phone, and answering machines permit calls to be screened. Most telephones now have a ringer-off or volume switch, which can be used during mealtime, rest time, or family time. As a last resort, one can just refrain from answering the phone—if it's important, they'll call back later.

Competition may also play an important role in the future of telephone solicitations. If the federal and state governments stay out

of the way long enough, alternative telephone companies will begin to take root and provide real choices in local service. Service innovations would require that telephone companies enjoy absolute, unrestricted ownership of their respective lines. Regulations like the "do-not-call" list currently being implemented by the FTC only disrupt market signals that would transmit the need for innovations and hinder their evolution. □

1. "Government plans nationwide 'do-not-call' list," Associated Press, *St. Petersburg Times Online*, December 19, 2002.

2. William Glanz, "Consumers to get help avoiding sales calls," *Washington Times*, December 18, 2002.

3. "Government plans nationwide 'do-not-call' list."

4. Ibid.

## On the Calendar at FEE . . .

### May 12–17: FEE Seminar for Homeschool Students

In cooperation with TeenPact, FEE will host an intensive 5-day seminar for homeschoolers. For further information about this program, contact Greg Rehmke at FEE.

### May 18–28: FEE Seminar for Pepperdine University Students

FEE will welcome students from Pepperdine University in Malibu, California, to Irvington-on-Hudson for a special program. Among the topics to be discussed: globalization, public policy, entrepreneurship, economic history, and money and finance.

# The Dubious Blessing of EU Membership

by Karl Sigfrid

**A**t their recent top meeting in Copenhagen, the leaders of the European Union (EU) finally decided to accept ten new members by 2004. The countries to join the EU will be Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Malta, and Cyprus. Most were under the Soviet Union's control during the cold war, and their entrance into the EU has been called historic. Europe is once again united after decades of forced separation between East and West. However, one might question whether EU membership is an appropriate symbol for the freedom that the ex-communist countries won when the Soviet empire collapsed. One might also ask whether a spider web of regulations from Brussels will bring the new members closer to Western Europe culturally and economically. To get a hint, we can look at what the EU has done to its current members.

Eight years ago I became a part of the European Union along with eight million other Swedish citizens. A slim majority of the people in Sweden had decided that we should be a part of Europe and put an end to living isolated with Norwegians and polar bears as our only allies. There were plenty of valid arguments for entering the EU. Most important were "The Four Freedoms" that

allow all EU citizens to move their goods, their services, their money, and themselves across European borders without bureaucrats' asking questions. There was also the peace argument. The EU was once founded to prevent a new world war, and even if the recently reunited Germans seemed happy, we didn't want to take any chances.

As members of the EU we got what we expected. We can move freely within the union, and Germany has yet not attacked. Unfortunately, along with the freedom to cross borders we got a new layer of government doing its best to increase its powers at the expense of national governments, local communities, families, and individuals. As if the national parliaments didn't come up with enough suggestions on how to protect me from myself, I now have a European parliament consisting of 626 people trying to help me out. Since I became a part of the EU the parliament has voted to make me stop buying vitamin supplements, stop watching tobacco ads, and stop eating licorice pipes. Licorice pipes and chocolate cigarettes will make me start smoking, the parliament fears. While at it, the parliament also decided that the EU should register women with silicone breasts. How fighting "Bay-watch" body ideals fits with the purpose of the institution remains to be explained.

As far as regulation-happy politicians are concerned, the EU is no different from any national government. What makes it a greater problem is that sensible politicians

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