FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE CHAIRMAN

June 5, 2007

The Honorable Edward Markey
United States House of Representatives
Washington, DC 20515

Dear Representative Markey:

I am writing in response to your letter of May 21, 2007, regarding the recent *New York Times* article on telemarketing fraud targeting elderly victims. Telemarketing fraud against any consumer is deplorable. When it is aimed at older consumers like Richard Guthrie, it is particularly repugnant. The Federal Trade Commission is doing everything it can to prosecute telemarketing fraud and to educate consumers on how to recognize such frauds and report them. I share your commitment to protecting consumers, and very much appreciate the opportunity to tell you about the FTC's extensive program to fight telemarketing fraud. The answers to the specific questions you raise follow a short description of the Commission's recent efforts to stop fraudulent telemarketing.

Since 1991, the FTC has brought more than 350 telemarketing cases, the vast majority of which involve fraud in the marketing of investment schemes, business opportunities, sweepstakes pitches, and the sales of various goods and services. The Commission promulgated the Telemarketing Sales Rule (TSR) in 1995, after Congress passed the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. Since 1996, the Commission has filed more than 240 cases aimed at stopping violations of the TSR and preventing telemarketing fraud. Through its law enforcement, the Commission has obtained orders for more than $500 million in consumer redress or disgorgement to the U.S. Treasury. During this same period, the Commission has obtained civil penalty orders totaling nearly $17 million.

Since the TSR was amended in 2003 to include the Do Not Call provisions, the Commission also has actively defended consumers' right not to receive calls from telemarketers. The National Do Not Call Registry now includes more than 144 million telephone numbers.[1]

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1 A Harris Interactive® Survey released in January 2006 showed that 94% of American adults have heard of the Registry and 76% have signed up for the Registry. Ninety-two percent of those polled reported receiving fewer telemarketing calls. *See* http://www.harrisinteractive.com/harris_poll/index.asp?PID=627.

Twenty-seven of the Commission's telemarketing cases have alleged Do Not Call violations, resulting in \$8.8 million in civil penalties and \$8.6 million in redress or disgorgement ordered.[2]

In addition to prosecuting cases against the telemarketers themselves, the Commission vigorously pursues defendants who assist those who violate the TSR. For example, the Commission has sued three customer list brokers who allegedly knew or ignored the fact that they supplied lists of consumers to fraudulent telemarketers.[3] The Commission also routinely seeks court orders that would ban or severely restrict telemarketing defendants from selling, renting, leasing, transferring, or otherwise disclosing their customer lists.

The FTC also has brought suit against other third-party malfeasors such as payment processors, without whose assistance telemarketers would not be able to gain access to consumers' bank accounts.[4] Generally, the FTC has alleged that these payment processors knew or consciously avoided knowing that they were facilitating fraudulent telemarketing operations in violation of § 310.3(b) of the TSR[5] and, where appropriate, also have alleged direct violations of Section 5 of the FTC Act.

Further, the Commission leverages its resources and expertise by coordinating with other law enforcement agencies to combat fraud. The FTC works with various federal, state, local, and

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[2] These Do Not Call cases are included in the 240 TSR cases noted above.

[3] *FTC v. Listdata Computer Services, Inc.*, No. 04-61062 (S.D. Fla., stipulated final order entered Aug. 17, 2004); *FTC v. Guidestar Direct Corp.*, No. CV04-6671 (C.D. Cal., stipulated final order entered Aug. 13, 2004); *FTC v. NeWorld Marketing LLC*, No. 1:04cv159 (W.D. N. Car., stipulated final order entered Aug. 12, 2004); *see also* http://www.ftc.gov/opa/2004/08/guidestar.shtm.

[4] *FTC v. Global Marketing Group, Inc.*, No. 8:06CV- 02272 (JSM) (M.D. Fla., filed Dec. 11, 2006)(litigation ongoing); *FTC v. First American Payment Processing, Inc.*, No. CV-04-0074 (PHX) (D. Ariz, stipulated final order entered Nov. 23, 2004); *FTC v. Electronic Financial Group*, No. W-03-CA-211 (W.D. Tex., stipulated final order entered Mar. 23, 2004); *FTC v. Windward Marketing, Ltd.*, No. 1:06-CV-615 (FMH) (N.D. Ga., stipulated final order against certain payment-processors entered June 25, 1996, summary judgment order against remaining payment-processors entered Sept. 30, 1997).

[5] The FTC does not have jurisdiction over banks and certain other financial institutions. These entities generally are regulated by the federal banking regulatory agencies – the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. Notably, the Commission recently authorized FTC staff to issue an opinion letter to NACHA-The Electronic Payments Association in support of that organization's proposed rules changes to strengthen safeguards against fraudulent transactions in the payment processing industry. The letter is available at http://www.ftc.gov/os/opinions/070423staffcommenttonacha.pdf.

international partners in law enforcement 'sweeps,' and often files joint telemarketing actions with the states.

When the Commission files a lawsuit in federal district court, it seeks every appropriate civil remedy that a court can grant it to stop telemarketing fraud, including asset freezes, the appointment of receivers, temporary and permanent injunctions, consumer redress, and disgorgement of ill-gotten gains. That is because the Commission has civil – not criminal – authority. The root activities described in the *New York Times* article are criminal, and criminal prosecution is the most effective deterrent to the type of fraud outlined in that article. FTC staff refers cases to the Department of Justice, individual U.S. attorneys offices, U.S. Postal Inspection Service, FBI, and state and local prosecutors for criminal prosecution through its Criminal Liaison Unit (CLU) – referrals that we have markedly increased during the past three years. Indeed, since October 1, 2002, 214 persons have been charged[6] in criminal cases involving telemarketing fraud that arose from referrals that CLU made and/or where an FTC attorney has been designated a Special Assistant United States Attorney to help with the criminal prosecution. Of those 214 charged, 111 were convicted or pleaded guilty. The rest are awaiting trial, in the process of extradition from a foreign county, or are fugitives from justice.[7]

The Commission's consumer and business education efforts complement its law enforcement initiatives. The FTC not only publishes compliance guides for business, but also a wealth of information in English and Spanish for consumers, including brochures and fact sheets on telemarketing fraud, sweepstakes and lotteries, foreign money offers, Internet auction fraud, work-at-home schemes, and advance-fee loans. This information is available in print and online, and has been widely distributed by our agency and our partners in education and outreach to senior groups and other community organizations. Indeed, since October 1, 2006, more than 200 senior-related groups from 41 states have requested FTC consumer information through the Commission's website. This includes groups such as the Scenic Valley Area Agency on Aging in Maquoketa, Iowa; the Council for Jewish Elderly in Chicago, Illinois; and the Middleboro Council on Aging in Middleboro, Massachusetts. From April 2006 to March 2007, the FTC distributed more than 750,000 print publications on telemarketing fraud issues alone to consumers, 7,600 of which were in Spanish. During the same period, the telemarketing fraud-related web pages on www.ftc.gov had more than 3.4 million visits.

In addition to providing educational resources to consumers and organizations nationwide, the FTC partners with other organizations and people who regularly meet with seniors (*e.g.*, Congressional offices, state attorneys general, local offices of the Better Business Bureau, community colleges, and libraries, to name a few) and send representatives to community events. The FTC also has a longstanding partnership with AARP to help ensure that

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[6] Eight of these indictments are still sealed; staff does not know the precise date of the indictment.

[7] One defendant was granted a mistrial after suffering a stroke. He has been reindicted.

its messages reach a broad audience of older consumers. For example, FTC staff have helped AARP train literally thousands of volunteers to become "Fraud Fighters," speakers who take anti-fraud messages deeper into the community.

Finally, the FTC collects consumer complaints about telemarketing and other types of fraud through its toll-free number and website. The FTC compiles these complaints into its "Consumer Sentinel" database. The database includes complaints the FTC receives, as well as complaints that have been filed with numerous federal, state, and local law enforcement agencies and private organizations. Consumer Sentinel is accessible to more than 1,600 law enforcement entities worldwide, including every state attorney general in the United States and consumer protection agencies in Canada and Australia.[8] FTC staff and other law enforcers use individual complaints and aggregated data from the Sentinel database to follow trends and to build individual cases.

I will now address the specific questions you raise in your letter:

1. **When did the FTC become aware of the practices described in the article cited above? In addition to infoUSA, does the FTC have reason to believe that additional firms are involved in similar activities? If yes, what are the names of all the firms that the FTC believes are employing similar tactics? Is the FTC aware of any contracts that infoUSA or any other firm employing similar practices may currently have with the Federal government? If yes, please provide the names of the firms with contracts with the Federal government.**

For more than two decades, the FTC has been aware of the prevalence of telemarketing fraud and, in some instances, the sale of customer lists to known fraudulent telemarketers. In 2002, FTC staff broadly examined the practices of customer list brokers, which resulted in lawsuits against three such brokers that allegedly knew or ignored the fact that they supplied lists of consumers to fraudulent telemarketers – Listdata Computer Services, Inc., Guidestar Direct Corporation, and NeWorld Marketing LLC.[9] The FTC continues to monitor the practices of list brokers in this area; however, its ongoing investigations are non-public.

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[8] The Federal Deposit Insurance Corporation, Federal Reserve Board, United States Secret Service, Office of the Comptroller of the Currency, and Department of Justice each participate as members of the Consumer Sentinel.

[9] The orders obtained by the FTC permanently barred the list brokers from providing lists to telemarketers engaging in illegal business practices and required them to pay nearly $200,000 combined in consumer redress. *FTC v. Listdata Computer Services, Inc.*, No. 04-61062 (S.D. Fla., stipulated final order entered Aug. 17, 2004); *FTC v. Guidestar Direct Corp.*, No. CV04-6671 (C.D. Cal., stipulated final order entered Aug. 13, 2004); *FTC v. NeWorld Marketing LLC*, No. 1:04cv159 (W.D. N. Car., stipulated final order entered Aug. 12, 2004); *see also* http://www.ftc.gov/opa/2004/08/guidestar.shtm.

In addition, the Commission also has challenged the practice of brokers selling sensitive customer information to third parties without having reasonable procedures in place to verify the legitimacy of these third parties. Last year, the FTC brought a lawsuit against ChoicePoint, Inc., one of the nation's largest data brokers, alleging that it violated the Fair Credit Reporting Act and the FTC Act by failing to screen prospective subscribers before selling them sensitive consumer information.[10] The Commission alleged that ChoicePoint approved as customers identity thieves who lied about their credentials and whose applications should have raised obvious red flags. Under the terms of a settlement, ChoicePoint paid $10 million in civil penalties and $5 million in consumer redress, and agreed to implement new procedures to ensure that it provides sensitive data only to legitimate businesses for lawful purposes.

The FTC is not in a position to know whether other government agencies have retained the services of infoUSA or any other list brokers. The Commission does subscribe to information services to assist in its law enforcement efforts, which include locating investigative targets, possible witnesses, and consumers who may be eligible for monetary redress once the Commission successfully prosecutes a case. To this end, the Commission currently subscribes to infoUSA's "Reference USA" database of business, residential, Canadian, and health care directory listings, but not to any other service provided by infoUSA. It also subscribes to other similar services such as Lexis Nexis for investigative purposes. I am not aware, however, of any allegations that any of these other services engaged in the practices described. (Of course, having a contract with a company does not preclude the agency from investigating practices of that company.)

2. **Has the FTC notified infoUSA, and any other firms engaged in similar practices, that its products are abetting crimes against consumers? If yes, please provide the date of the notice(s), the individuals and entities notified, and copies of all correspondence and emails associated with the notice(s), including correspondence sent from the FTC and responses from the entities. If any entities have not responded to FTC notices, please indicate which have not.**

Although the Commission does not notify industry members individually when it obtains an order in a telemarketing fraud case, it publicizes its orders through a variety of methods. It issues press releases to announce orders obtained and makes all orders publicly available on the FTC's website. The Commission also has an extensive outreach program aimed at the direct marketing community – Commission staff speaks at conferences, writes articles for industry newsletters, and participates in many of their seminars. Commissioners and Commission staff have made numerous presentations to the Direct Marketing Association and the American Teleservices Association, most recently in May 2007. Through its outreach efforts, the Commission aims to educate the business community on how to comply with the TSR, including

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[10] *U.S. v. ChoicePoint, Inc.*, CV-0198 (N.D. Ga, consent decree entered Jan. 30, 2006).

its provisions prohibiting the assisting and facilitating of telemarketing fraud. The Commission will continue to evaluate ways to improve the publicity generated by its orders.

In addition, as noted, the Commission continues to monitor practices in this area. The non-public nature of our investigations, however, prohibits us from commenting on any investigations that may be underway.

3. **How many staff members currently are responsible for investigating telemarketing schemes? For each year from 2003 through 2006 for which the FTC has data, please provide the number of actions the FTC has taken against entities for telemarketing fraud and note, if applicable, whether the fraud targeted elderly or other vulnerable populations.**

During each of the past three fiscal years, the FTC has devoted 65 to 77 full time employee equivalent work years to enforcement of the Telemarketing Sales Rule. The FTC's work to protect seniors is broader than addressing telemarketing fraud. The FTC also expends substantial resources on other issues of interest to seniors, including identity theft, health fraud, and financial practices.[11]

As for telemarketing fraud actions taken from 2003 through 2006, the following chart shows the total number of federal district court orders entered in FTC cases brought to enforce the TSR in which the FTC has obtained direct judgments to provide consumer redress or disgorgement to the U.S. Treasury, civil penalties, or injunctive relief alone without any monetary relief:

	Consumer Redress Orders		Civil Penalty Orders		Orders With Injunctive Relief Alone
Fiscal Year	Number	Amount Ordered	Number	Amount Ordered	Number
2003	17	$11,131,000	3	$860,000	1
2004	40	$148,041,000	0	$0	2
2005	31	$132,628,000	4	$809,000	9
2006	28	$61,926,000	12	$12,994,000	7
10/01/2006-4/30/2007	19	$16,402,000	4	$1,135,000	2
TOTAL	135	$370,128,000	23	$15,798,000	21

[11] Some cases brought as part of the agency's overall fraud program involve scams targeting seniors. For example, this past year the FTC announced a law enforcement sweep against business opportunity scams. One of the cases identified in the sweep involved a healthcare business opportunity, which appeared to affect elderly consumers disproportionately. *See FTC v. Prophet 3H, Inc.*, Civ. No. 06-CV-1692 (N.D. Ga. temporary restraining order granted July 18, 2006).

The FTC does not systematically track cases targeting seniors because the agency has found that most fraud affecting the elderly harms other consumers also.[12] Some of the Commission's cases, however, have involved frauds directed at seniors. For example, in one case, the FTC sued telemarketers that masqueraded as Social Security representatives and claimed that the call recipients risked losing their Social Security payments if they did not provide their bank account information.[13] Just last month, based on information provided by the FTC, a federal judge sentenced one of the principals in this scheme to five years in prison. In addition, generally I am aware that certain telemarketing scams do take advantage of specific vulnerable populations. For example, advance fee loan and credit repair scams tend to target those in debt.

4. Please describe how the FTC leverages the expertise of other government departments and agencies, including state attorney generals, to coordinate the investigation and pursuit of telemarketing scams. Have the resources provided to the FTC limited its ability to identify, investigate or pursue cases of telemarketing fraud? If yes, please explain.

The Commission leverages its consumer protection resources by engaging various law enforcement partners to pursue a variety of frauds perpetrated against consumers, including telemarketing fraud. The FTC works with various federal, state, local, and international partners to conduct law enforcement sweeps that focus on a specific type of fraud,[14] and often files joint

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[12] The FTC has assessed the prevalence of fraud against seniors generally. The FTC conducted a fraud survey in 2003 and found that consumers 65 years old or older did not experience more fraud than those who were younger. *See* Press Release, "FTC Releases Survey on Consumer Fraud" (August 5, 2004), *available at* http://www.ftc.gov/opa/2004/08/fraudsurvey.shtm. FTC staff also worked with AARP to evaluate the results of the AARP's 1996 survey of victims of telemarketing fraud. The survey found that telemarketing fraud victims surveyed were more affluent and more educated than other people age 50 and older. *See Telemarketing Fraud Victimization of Older Americans: An AARP Survey* (AARP 1996) at 4, 7.

[13] *See, e.g., FTC v. XTel Marketing*, No. 04c-7238 (N.D. Ill. 2005); *See also FTC v. Dillon Sherif*, No. 02-cv-00294 (W.D. Wash. April 12, 2003) (permanent injunction against telemarketing fraudsters who targeted American senior citizens in a cross-border lottery scheme); *FTC v. Bezeredi*, No. CV5 1739 (W.D. Wash. permanent injunction issued April 3, 2007) (same); *FTC v. 627867 B.C. Ltd. D.B.A. Newport Group, et al.*, No. C03-3166Z (W.D. Wash. filed October 2003) (cross-border lottery scheme targeting American seniors).

[14] The following is a sampling of some of the sweeps in which the FTC and its law-enforcement partners have engaged over the past several years: "Dialing for Deception" http://www.ftc.gov/opa/2002/04/dialing.shtm (a sweep by the FTC that targeted telemarketing fraud in connections with in-bound telephone calls); "Ditch the Pitch" http://www.ftc.gov/opa/2001/10/ditch.shtm (a sweep targeting fraudulent out-bound

(continued...)

telemarketing actions with the states.[15] FTC staff also engages in frequent, informal communications with state attorney general offices, in particular, through working groups to discuss specific issues relating to telemarketing fraud. For example, FTC and state attorney general staff have created a working group on payment processing services used by telemarketers. Through this working group, the staff speak regularly to coordinate law enforcement, discuss trends, and evaluate policy proposals.

In recent years, the Commission has worked particularly closely with Canadian law-enforcement agencies to combat telemarketing fraud against American consumers. Commission staff participates in several regional partnerships with Canadian enforcement agencies. As part of its Toronto-based partnership, the FTC has brought over twenty telemarketing fraud cases. As part of British Columbia-based Project Emptor, the FTC has obtained judgments of over $30 million since 1998, and its partners have indicted over 40 Canadian telemarketers. Thirteen of these telemarketers have been extradited and convicted in the United States, and sentenced to 3 to 10 years.[16] Now that Congress has enacted the U.S. SAFE WEB Act, I anticipate even more foreign cooperation and assistance.[17] In addition, as noted above, Commission staff works closely with its criminal enforcement counterparts when we refer cases for criminal prosecution

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[14] (...continued)
telemarketing by the FTC and 6 States); "Operation No Credit," http://www.ftc.gov/opa/2002/09/opnocredit.shtm (43 law-enforcement actions, including criminal indictments, brought by the FTC, the DOJ, the U.S. Postal Inspection Service, and 11 State and local authorities); "Operation Protection Deception" http://www.ftc.gov/opa/2000/10/protectdecpt.shtm (a sweep against telemarketers of fraudulent "credit card protection" services with extensive assistance from 5 States and the Federal Burea of Investigation ("FBI")); "Senior Sentinel" http://www.ftc.gov/opa/1995/12/sen.shtm (a sweep coordinated by the DOJ and FBI, with 5 civil cases brought by the FTC, that led to hundreds of arrests and indictments across the country); "Project Telesweep" http://www.ftc.gov/opa/1995/07/scam.shtm (nearly 100 cases filed by the FTC, DOJ and 20 states).

[15] *See, e.g.*, *FTC and State of Maryland v. Accent Marketing, Inc.*, No. 02-0405 (S.D. Ala. 2002); *FTC and State of Washington v. Westcal Equipment, Inc.*, No. C02-1783 (W.D. Wash. 2002); *FTC and State of Illinois v. Membership Services, Inc.* , No. 01-CV-1868 (S.D. Cal. 2001); *FTC, Commonwealth of Virginia, State of North Carolina, and State of Wisconsin v. The Tungsten Group, Inc.* , No. 2:01cv773 (E.D. Va. 2001); *FTC and State of Nevada v. Consumer Credit Services, Inc.* , No. CV-S-98-00741 (D. Nev. 1998); *FTC and State of New Jersey v. National Scholastic Society, Inc.*, No. 97-2423 (D.N.J. 1997).

[16] In May, a British Columbia court authorized the extradition of 3 more Canadians.

[17] The U.S. SAFE WEB Act, Pub. L. No. 109-455 (2006), gave the Commission important new authority to share confidential information with our foreign law-enforcement counterparts so that we can work more effectively to help Americans who are harmed from abroad.

through our Criminal Liaison Unit (CLU). In response to your last question, I do not believe that the resources provided to the Commission have limited our ability to effectively identify, investigate, or pursue cases of telemarketing fraud.

5. **According to the article, financial institutions such as Wachovia Bank accepted fraudulent checks in the names of victims. Specifically, Wachovia reportedly accepted $142 million of unsigned checks from companies that made unauthorized withdrawals from thousands of accounts belonging to fraud victims and failed to shut down the accounts or take action in response to warnings from other financial institutions that the companies submitting the checks were fraudsters. Is this accurate? What legal obligations, if any, do financial institutions have to perform such investigations? Has the FTC contacted the appropriate banking regulators regarding this matter? If not, why not?**

The FTC is not in a position to investigate Wachovia's actions in the matter, because the FTC does not have jurisdiction over banks and certain other financial institutions. These entities generally are regulated by the federal banking regulatory agencies – the Office of the Comptroller of the Currency, the Federal Reserve Board, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. These agencies, which exercise regulatory authority and conduct safety and soundness reviews, are directly knowledgeable about the procedures and legal obligations designed to prevent banks from accepting fraudulent checks.

Nonetheless, because the FTC does have jurisdiction over certain non-bank financial service providers, the staff routinely works with federal banking agencies on matters of mutual interest. It has cooperated on law enforcement activities; lent its consumer protection expertise to banking agencies through direct cooperation, as well as through speeches, trainings, workshops, and seminars; participated in joint task forces and rulemaking projects; and filed public comments with banking agencies. In addition, FTC staff communicates frequently with the banking agencies on an informal basis. Indeed, FTC staff has contacted the appropriate federal banking regulators to discuss the activities described in the *New York Times* article referenced in your letter.

6. **Does the FTC have any recommendations for remedial legislation that would strengthen the ability of the FTC and other government regulators to successfully pursue and prosecute cases of telemarketing fraud?**

The FTC regularly evaluates whether its available statutory and regulatory tools are appropriate to pursue its law enforcement mission. This is particularly true in the telemarketing arena, as evidenced by the amendments to the Telemarketing Sales Rule in 2003 (most notably, the Do Not Call provisions). The Commission has no outstanding recommendations for remedial legislation at this time.

I fully share your concern about telemarketing fraud and assure you that the Commission will maintain its efforts to combat unfair and deceptive practices in this area. If you or your staff have any additional questions or comments or wish to share additional information, please feel free to contact me or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

Deborah P. Majoras

Deborah Platt Majoras
Chairman