

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2256

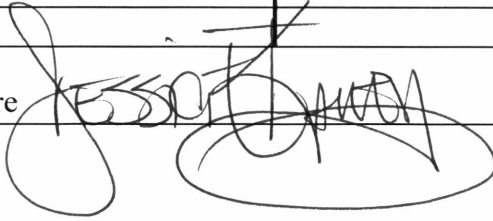
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2256

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 26, 1999

Tape Number	Side A	Side B	Meter #
3	x		870-end
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing the hearing on SB2256. All senators were present.

Senator Traynor introduced SB2256.

SENATOR HEITKAMP testified in support of SB2256.

Senator Sand asked him how you would stop an out of state telemarketer. Senator Heitkamp said that the companion bill has enough teeth to do deal with that. Senator Thompson asked Senator Heitkamp if, in order for the other bill to function, it would be necessary to pass this bill.

Senator Heitkamp said that he believes that this bill is more reliant on the other bill.

Dave Huey testified in support of SB2256. His testimony is included.

Senator Thompson said that he has a growing concern with the aging. He wanted to know how they get the aging phone numbers. Mr. Huey said that he is not sure how they do that.

Illona Jeffcoat-Sacco testified in support of SB2256. Her testimony is included.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2256

Hearing Date January 26, 1999

Brent McCarthy testified in support of SB2256. His testimony is included.

Gary Lee, Direct Marketing association, testified in opposition to SB2256. Senator Heitkamp asked him if it is a right that the caller has to say that they don't want to be on the list. The reply was yes. Senator Heitkamp then asked him if they were trying to muddy up the part that says that they have to identify who they are. His reason as that they are just an agent of someone else.

Marilynn Foss testified on SB2256.

Senator Sand asked Ms. Foss if she felt that North Dakota needs 2256. Her answer was no.

Senator Heitkamp said that if they say that they can do this for \$5, he doesn't see a problem with this. Illona Jeffcoat-Sacco said that she used five dollars because that is what Georgia used. She told the committee that if the amount of money was too small then she would address the committee again in the 2001 session.

Senator Mutch closed the hearing on SB2256.

Discussion was held on ~~FE~~EBRUARY 2, 1999.

Senator Klein motioned for a do pass on the amendments that were offered by US West. Senator Heitkamp seconded his motion. The motion carried with a 7-0-0 vote.

Senator Heitkamp motioned for a do pass with amendments recommendation from the committee. Senator Thompson seconded his motion was unsuccessful with a 3-4-0 vote.

Senator Krebsbach motioned for a do not pass with amendments recommendation from the committee. Senator Sand seconded her motion. The motion carried with a 4-3-0 vote.

Senator Klein will carry the bill.

FISCAL NOTE

(Return original and 13 copies)

Bill/Resolution No.: SB 2256

Amendment to:

Requested by Legislative Council

Date of Request: 1-18-99

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *The bill provides that the Public Service Commission establish a database of customers who choose not to be called by telemarketers. The PSC envisions that the duties assigned to it by this bill will be privatized with a private operator retaining all the revenues generated from the service in return for providing the service. The PSC anticipates that there will be no net effect on the general fund through creating and administering a database. The enforcement of the law however, will be the responsibility of the Attorney General. The Attorney General's office should be consulted concerning the effect the enforcement provisions will have on the general fund.*

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	N/A	N/A	N/A	N/A	N/A	N/A
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

- What, if any, is the effect of this measure on the appropriation for your agency or department:


- For rest of 1997-99 biennium: N/A
- For the 1999-2001 biennium: N/A
- For the 2001-03 biennium: N/A

- County, City, and School District fiscal effect in dollar amounts: *No Effect*

	1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium	
	Cities	School Districts		Cities	School Districts		Cities	School Districts
Counties			Counties			Counties		

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 22, 1999*

Signed: 
 Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

Date: 2/2/99
Roll Call Vote #: 2256 #1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken AMEND (U.S. WEST)

Motion Made By KLEIN Seconded By HEITKAMP

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/2/99
 Roll Call Vote #: 2856 #2

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By HEITKAMP Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch		X			
Senator Sand		X			
Senator Klein		X			
Senator Krebsbach		X			
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 3 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/2/99
 Roll Call Vote #: 2250 #3 SR231895

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By KREBSBACH Seconded By JAMO

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp		X			
Senator Mathern		X			
Senator Thompson		X			

Total (Yes) 4 No 3

Absent 0

Floor Assignment ~~PAULSEN~~ KLEIN

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2256: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2256 was placed on the Sixth order on the calendar.

Page 1, line 12, after "3." insert ""Telecommunications company" means that term as defined in section 49-21-01.

4."

Page 2, line 8, after "solicitations" insert ", except the commission may not require a telecommunications company to provide that notification to its subscribers"

Page 2, line 11, after "notice" insert ", except the commission may not require a telecommunications company to receive that notice from its subscribers"

Page 2, line 15, after "base" insert ", except the commission may not require a telecommunications company to receive or collect the objections and revocations from its subscribers"

Renumber accordingly

1999 TESTIMONY

SB 2256

S.B. 2256

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 26, 1999

TESTIMONY

Mr. Chairman and members of the Senate Committee on Industry, Business and Labor, I am Illona Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission. The Commission asked me to testify on its behalf in support of SB 2256.

As you may know, the Commission is very concerned with the extent of slamming and cramming problems in the telecommunications industry—in North Dakota and nationwide. One cannot talk about the problems of slamming and cramming without talking about telemarketing. Telemarketing of telecommunications service is at the heart of the slamming and cramming problem.

SB 2256 is an attempt to address some of the problems associated with telemarketing and for this reason, the Commission supports it. Unlike an outright prohibition or a burdensome financial obligation, SB 2256 creates a scheme that is voluntary for consumers with only a nominal financial impact on telemarketers. We believe the proposal offers good protection to consumers who want it, without unnecessarily burdening an important industry.

We believe the following components of this legislation are key to its benefits.

Most importantly, appearing on the list is within the control of each consumer. If limiting telemarketing calls is important to a person, that person can be on this list for a nominal fee. Likewise, the consumer also has a choice

regarding whether or not he will receive telemarketing calls representing charitable organizations.

Secondly, the cost to telemarketers to obtain the list is nominal. The ten-dollar fee should impose no economic burden on any telemarketer.

Thirdly, it is the intention of the Commission to solicit bids from the private sector for administration of the database and the distribution of the "do not call" lists. Privatization of this function will mean additional jobs and income for a private business in North Dakota.

Finally, administration of the database should impose no burden on the state. Once the operating parameters of the database are established the operation should be self-supporting and will likely be privatized. There should be no impact to the budget of any agency or the general fund from this aspect of the program. While the Commission is willing to administer the creation of the database and oversee management of the list, the Commission would have no objection if the database responsibilities were assigned to some other agency.

The Public Service Commission urges your favorable recommendation on SB 2256.

**Telephone Preference Service
The Direct Marketing Association
P.O. Box 9014
Farmingdale, NY 11735-9014**

For many people, telephone marketing calls provide convenience and value. If you enjoy shopping by phone, but wish to reduce the number of calls you receive at home, ask the companies with which you already do business not to rent your name to other companies. This can be done when you place an order, make a donation or any time you communicate with a telephone marketer.

Direct marketers recognize that some people do not like to receive telephone solicitation calls. If you want to reduce the number of national advertising calls you receive at home, use this form to register with the Direct Marketing Association's Telephone Preference Service (TPS). Your name will remain on the file for five years. If you move or if your home phone number changes, please register again.

The DMA will distribute your request to companies that use this do-not-call file. After a few months you will receive fewer telephone marketing calls from national marketers, like credit card offers and magazine subscriptions. Local organizations usually do not participate.

If you continue to receive unwanted telephone marketing calls, ask the company calling you to remove your name and phone number from its calling list.

**TELEPHONE PREFERENCE SERVICE
DIRECT MARKETING ASSOCIATION
PO BOX 9014
FARMINGDALE NY 11735-9014**

To: North Dakota State Legislature

The Direct Marketing Association (DMA)
has 4100 Members nationwide
who sometimes use the telephone.....

we have members headquartered in North Dakota
and with operations in North Dakota

DMA opposes a state do-not-call list as proposed in SB 2256
because we already serve consumers in two important ways

if you ask us not to call -- we don't

we put you on our in-house
do-not-call list

we do not trade your name
or number with
any other company

it's the law

we support and pay for an industry service to consumers
Telephone Preference Service (TPS)

a consumer can write to TPS and be deleted from
calling lists of national marketers

this service is free to consumers and paid for by
industry -- for 20 years

there are two federal laws which require a company to implement
a consumer's request not to be called again

Telephone Consumer Protection Act (FCC administered)

Telemarketing Sales Rule (FTC administered)

DMA supported both laws

these two federal laws were intended and implemented to preempt
the states as far as interstate marketing is
concerned

that means that a North Dakota law would affect
only companies who call North Dakotans from North
Dakota

this proposed North Dakota law is not practical or helpful to
North Dakota consumers or North Dakota businesses

distribution of products and services is one key element that distinguishes the United States from all other nations

we know there are consumers in North Dakota who need or want our goods and services

we believe your constituents would rather decide who may call and who may not

consider North Dakota consumers

the handicapped may need reading material or may need a California company which only provides clothing and aids for persons confined to a wheelchair

the blind may enjoy our books on tape

the elderly or others may need after - surgery aids or incontinency products

parents may seek special toys or books or teaching aids for their children

and consider North Dakota businesses

this bill would mean a painter can not try to solicit some business

neither can the heating contractor

the tour operator

or the restaurant introducing itself to the neighborhood

an entrepreneur at the holidays cannot offer by phone special wreaths or decorations or canned chili sauce

neither can the Avon lady

while marketers are sometimes the people we love to hate

we come through for you

we offer a wide variety of goods and services

we provide them in a week

we take them back if you are not pleased

and we won't call you if you tell us not to -- it's the law
but we are in business

we have to stay in business to
be there when you need us

but we won't call if you tell us not to

we respectfully urge North Dakota legislators to

make North Dakota law consistent with federal law

so we can continue to serve North Dakotans who may want to hear
from us

this proposed bill wouldn't ban all calls anyway

the telephone, a wonderful invention, brought with it a few
frustrations

like wrong numbers

We take you off our list.

We take you off all lists.

Thank you very much for listening.

Submitted by the Direct Marketing Association (DMA)

North Dakota counsel Ervin Lee
701 837 1319

for DMA Anne Darr
800 890 6900

The Direct Marketing Association (DMA)

4100 U.S. companies
providing over 51,266 direct marketing jobs in North Dakota
generating \$2.8 billion direct marketing sales revenue
(1996 figures)

OPPOSE North Dakota SB 2256

Consumer is already protected

- A. Two federal laws require companies to maintain an in-house do-not-call list.

Telephone Consumer Protection Act (TCPA)	FCC
Telemarketing Sales Rule	FTC

If a consumer says, "don't call again," the business may not call for ten years. See Attachment A

- B. The Direct Marketing Association offers a free service to consumers to be deleted from national marketing lists. See Attachment B

Telephone Preference Service (TPS)

TPS is regularly advertised in newspapers, magazines, and the front pages of local telephone directories.

A consumer merely sends his or her name and telephone number to TPS. TPS distributes quarterly lists to businesses of numbers that should not be called.

- C. Some consumers use technology to avoid calls -- such as answering machines, caller id, etc.

[57 FR 4740, Feb. 7, 1992]

Subpart L—Restrictions on Telephone Solicitation

§64.1200 Delivery restrictions.

- (a) No person may:
 - (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice.
 - (2) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.
 - (3) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
 - (4) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.
 - (5) Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by §64.1200(e) of this section.
 - (6) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
 - (7) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.
 - (b) For the purpose of §64.1200(a) of this section, the term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.
 - (c) The term *telephone call* in §64.1200(a)(2) of this section shall not include a call or message by, or on behalf of, a caller:
 - (1) That is not made for a commercial purpose.

- mission of any unsolicited advertisement.
- (3) To any person with whom the caller has an established business relationship at the time the call is made, or
- (4) Which is a tax-exempt nonprofit organization.
- (d) All artificial or prerecorded telephone messages delivered by an automatic telephone dialing system shall:
 - (i) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and
 - (ii) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player which placed the call) or address of such business, other entity, or individual.
- (e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber:
 - (1) Before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), and
 - (2) Unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:
 - (i) Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list.
 - (ii) Training of personnel engaged in telephone solicitation. Personnel engaged in any aspect of telephone solicitation must be informed and trained in the existence and use of the do-not-call list.
 - (iii) Recording, disclosure of do-not-call requests. If a person or entity making a telephone solicitation (or on whose behalf a solicitation is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity

- made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.
- (iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call.
- (v) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.
- (vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a do-not-call list for the purpose of any future telephone solicitations.
 - (1) As used in this section:
 - (i) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.
 - (ii) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to trans-

- electronic signal received over a regular telephone line onto paper.
- (3) The term *telephone solicitation* means the initiation of a telephone or message for the purpose of encouraging the purchase or rental of, or payment in, property, goods, or services which is transmitted to any person, such term does not include a call message:
 - (i) To any person with that person's prior express invitation or permission;
 - (ii) To any person with whom the caller has an established business relationship; or
 - (iii) By a tax-exempt nonprofit organization.
- (4) The term *established business relationship* means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.
- (5) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

[57 FR 4833, Oct. 23, 1992; 57 FR 53293, Nov. 9, 1992]

7) Pattern of calls.

(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

- (i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or
- (ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating 310.4(b)(1)(ii) if:

- (i) It has established and implemented written procedures to comply with 310.4(b)(1)(ii);
- (ii) It has trained its personnel in the procedures established pursuant to 310.4(b)(2)(i);
- (iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with 310.4(b)(1)(ii); and
- (iv) Any subsequent call is the result of error.

(c) **Calling time restrictions.** Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 A.M. and 9:00 P.M. local time at the called person's location.

(d) **Required oral disclosures.** It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that

person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

A FTC 16 CFR 310

310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and
- (5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with 310.5(a)(4).



Telephone Preference Service
Direct Marketing Association
P.O. Box 9014
Farmingdale, NY 11735-9014

B

For many people, telephone marketing calls provide value and convenience. Yet, direct marketing companies recognize that some people do not like to receive telephone solicitation calls at home. Others may want to shop by phone but would like to reduce the volume of calls they receive. Today, both attitudes can be satisfied.

If you enjoy shopping by phone but wish to reduce the volume of calls you receive at home, we suggest that you ask the company calling not to rent your name to other companies. This can be easily accomplished when you place an order, make a donation or any time you communicate with a telephone marketer.

If you want to reduce the amount of national advertising calls you receive at home, use this form to register with the Direct Marketing Association's Telephone Preference Service (TPS). You must provide your area code and telephone number along with your name and address to be properly registered. DMA will distribute your request to companies subscribing to TPS.

After a few months, TPS will reduce the amount of advertising calls you receive from national marketers, like credit card offers and magazine subscriptions. Some local organizations and charities may not participate. Names remain on the file for five years. After 5 years, you will need to register with TPS again.

If you continue to receive unwanted telephone calls after a few months, DMA suggests that you request name removal from those companies when they call.

YES! PLEASE REGISTER MY NAME WITH TELEPHONE PREFERENCE SERVICE.

NAME:

STREET: APT #:

CITY:

STATE: ZIP CODE:

TELEPHONE NUMBER:

DIREC TEL
123 1ST ST SW
MINOT ND 58701-3805
Phone: 701-857-6000
Fax: 701-839-0222

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: A VERY GOOD
Employees: 300 Sales: F County: 38101
BUZZ STITZER, Vice President

DIRECTEL
4324 UNIVERSITY AVE
GRAND FORKS ND 58203-1936
Phone: 701-795-0333
Fax: 701-795-0305

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: A VERY GOOD
Employees: 225 Sales: F County: 38035
BRUCE SENTI, Manager

DIRECTEL
609 W MAIN ST
MANDAN ND 58554-3149
Phone: 701-663-5576
Fax: 701-663-0084

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: A VERY GOOD
Employees: 200 Sales: F County: 38059
NICK GLAESIC, Owner

DYNAMICS MARKETING
1004 HILL AVE
GRAFTON ND 58237-2226
Phone: 701-352-1356
Fax: 701-352-1558

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: B GOOD
Employees: 58 Sales: D County: 38099
PAUL DICKSON, Manager

DYNAMICS MARKETING INC
202 4TH ST SW
COOPERSTOWN ND 58425-0000
Phone: 701-797-3602
Fax: 701-797-3603

SIC: 738912,873204
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: B GOOD
Employees: 60 Sales: D County: 38039
STACY SOMMERVILLE, Owner

FRONTEER DIRECTORY DIV
216 N 23RD ST
BISMARCK ND 58501-4912
Phone: 701-258-6000
Fax: NA

SIC: 738912,731103
Fran/Spec: NA Hdq/Branch: NA Ad: NA
Credit Rating Code: C SATISFACTORY
Employees: A Sales: A County: 38015
DENNIS OLSON, Manager

GREAT PLAINS DEVELOPMENT INC
204 11TH ST W
BOTTINEAU ND 58318-2007
Phone: 701-228-2252
Fax: 701-228-5969

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: C SATISFACTORY
Employees: 70 Sales: D County: 38009
JERRY MALEY, Vice President

IMPACT OF HAZEN
903 SUNRISE DR
HAZEN ND 58545-4720
Phone: 701-748-2558
Fax: 701-748-2580

SIC: 738912
Fran/Spec: NA Hdq/Branch: NA Ad: A
Credit Rating Code: C SATISFACTORY
Employees: 35 Sales: C County: 38057
MARK OLSON, Owner

ACI
 203 4TH ST
 DEVILS LAKE ND 58301-2409
 Phone: 701-662-1060
 Fax: NA

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: A VERY GOOD
 Employees: 170 Sales: F County: 38071
 CAROL DARLING, Manager

ACI TELECENTRICS INC
 2425 W MAIN ST
 VALLEY CITY ND 58072-4409
 Phone: 701-845-3849
 Fax: NA

SIC: 738912
 Fran/Spec: NA Hdq/Branch: 2 Ad: NA
 Credit Rating Code: U UNKNOWN
 Employees: A Sales: A County: 38003

ACI TELECENTRICS INC
 211 4TH ST
 DEVILS LAKE ND 58301-2409
 Phone: 701-662-1060
 Fax: NA

SIC: 738912
 Fran/Spec: NA Hdq/Branch: 2 Ad: NA
 Credit Rating Code: U UNKNOWN
 Employees: A Sales: A County: 38071

ADVANTAGE LINE
 2218 4TH AVE W
 WILLISTON ND 58801-3425
 Phone: 701-774-3500
 Fax: 701-774-2901

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: B GOOD
 Employees: 75 Sales: D County: 38105
 E MARK HARDY, Owner

CONNECTION
 111 2ND ST SE
 GUGBY ND 58368-1801
 Phone: 701-776-2520
 Fax: 701-776-2542

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: B GOOD
 Employees: 150 Sales: E County: 38069
 JACQUELINE HULM, Manager

CONTACT AMERICA
 216 N 23RD ST
 BISMARCK ND 58501-4912
 Phone: 701-221-9000
 Fax: 701-221-2555

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: C SATISFACTORY
 Employees: 65 Sales: D County: 38015
 SHERI GREFF, President

DAKOTAH DEVELOPMENT
 75 MAIN AVE S
 FESSENDEN ND 58438-7101
 Phone: 701-547-3340
 Fax: 701-547-3554

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: C SATISFACTORY
 Employees: 50 Sales: D County: 38103
 REBECCA ROLLER, Manager

DAKOTAH MARKETING & RESEARCH
 1 27TH ST NE
 MINOT ND 58703-5165
 Phone: 701-857-6399
 Fax: 701-857-6300

SIC: 738912, 308901, 873204
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: A VERY GOOD
 Employees: 220 Sales: F County: 38101
 DEBORAH FARSTAD, Owner

 IMPACT OF WATFORD CITY
 305 12TH ST SE
 WATFORD CITY ND 58854-0000
 Phone: 701-842-2220
 Fax: 701-842-2225

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: C SATISFACTORY
 > Employees: 35 Sales: C County: 38053
 MARK OLSON, President

 MARQUETTE INC
 ROUTE 1
 SYKESTON ND 58486-0000
 Phone: 701-984-2259
 Fax: NA

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: U UNKNOWN
 Employees: A Sales: A County: 38103

 MIDWEST TELEMAR INC
 112 MAIN ST
 MOHALL ND 58761-0000
 Phone: 701-756-6483
 Fax: 701-756-6470

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: B GOOD
 > Employees: 82 Sales: E County: 38075
 STEVE HETT, Owner

 MTI MIDWEST TELEMAR INTL
 121ST ST
 LANGDON ND 58249-0000
 Phone: 701-256-5303
 Fax: 701-256-3970

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: C SATISFACTORY
 > Employees: 34 Sales: C County: 38019
 NICHOL BIRNEL, Manager

 STRATEGIC TELECOMMUNICATIONS
 12 N UNIVERSITY DR # 322
 FARGO ND 58102-4661
 Phone: 701-239-9223
 Fax: 701-239-9631

SIC: 738912
 Fran/Spec: NA Hdq/Branch: NA Ad: A
 Credit Rating Code: C SATISFACTORY
 > Employees: 60 Sales: D County: 38017
 LINDA TAYLOR, Manager

Approx 1,889 people to

98273.0100

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2256

Introduced by

Senators Traynor, Heitkamp

Representatives Gulleson, Kliniske

1 A BILL for an Act to create and enact chapter 49-24 of the North Dakota Century Code, relating
2 to telephone solicitation sales; to provide a penalty; and to provide an effective date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 49-24 of the North Dakota Century Code is created and enacted
5 as follows:

6 **49-24-01. Definitions.** In this chapter, unless the context or subject matter otherwise
7 requires:

- 8 1. "Caller identification service" means a type of telephone service that permits
9 telephone subscribers to see the telephone number of incoming telephone calls.
- 10 2. "Residential subscriber" means a person who has subscribed to residential local
11 exchange telephone service or the other persons living or residing with that person.
- 12 3. "Telephone solicitation" means any voice communication over a telephone line for
13 the purpose of encouraging the purchase or rental of, or investment in, property,
14 goods, or services, but does not include communications to any residential
15 subscriber with that subscriber's prior express invitation or permission. The
16 communication, however, may be from a live operator, through the use of
17 automatic dialing-announcing device equipment or by other means.

18 **49-24-02. Prohibited telephone solicitations.** A person or entity may not make or
19 cause to be made any telephone solicitation to the telephone line of any residential subscriber
20 in this state who has given notice to the commission, in accordance with rules adopted under
21 section 49-24-03, of the subscriber's objection to receiving telephone solicitations.

22 **49-24-03. Establishment of data base by commission.** The commission shall
23 establish and provide for the operation of a data base to compile a list of telephone numbers of

**Fifty-sixth
Legislative Assembly**

1 residential subscribers who object to receiving telephone solicitations. The commission shall
2 have the data base in operation by August 1, 2000.

- 3 1. The data base may be operated by the commission or by another entity under
- 4 contract with the commission.
- 5 2. By August 1, 2000, the commission shall adopt rules that:
- 6 a. Specify the methods by which the commission may inform residential
- 7 subscribers of the opportunity to provide notification to the commission or its
- 8 contractor that the subscriber objects to receiving telephone solicitations;
- 9 b. Specify the methods by which each residential subscriber may give notice to
- 10 the commission or its contractor of the subscriber's objection to receiving
- 11 solicitations or revocation of the notice;
- 12 c. Specify the length of time for which a notice of objection is effective and the
- 13 effect of a change of telephone number on the notice;
- 14 d. Specify the methods by which the objections and revocations are collected
- 15 and added to the data base;
- 16 e. Specify the methods by which any person or entity desiring to make telephone
- 17 solicitations may obtain access to the data base as required to avoid calling
- 18 the telephone numbers of residential subscribers included in the data base;
- 19 f. Specify that the residential subscriber may elect to except from the notice
- 20 solicitations by or on behalf of a charitable organization, as defined in section
- 21 50-22-01, and licensed by the secretary of state at the time of the solicitations,
- 22 pursuant to chapter 50-22, to make charitable solicitations in this state; and
- 23 g. Specify any other matters relating to the data base that the commission
- 24 deems desirable.

25 **49-24-04. Inclusion in national data base.** If, pursuant to section 227(c) of the
26 Telephone Consumer Protection Act of 1991 [Pub. L. 102-243; 105 Stat. 2394; 47 U.S.C.
27 227(c)], the federal communications commission establishes a single national data base of
28 telephone numbers of subscribers who object to receiving telephone solicitations, the
29 commission shall include the part of the single national data base that relates to North Dakota
30 in the data base established under this chapter.

Fifty-sixth
Legislative Assembly

1 **49-24-05. Fees.** A residential subscriber may be charged a fee of five dollars, payable
 2 to the commission, for each notice for inclusion in, exclusion from, or change in the data base
 3 established under this chapter. A person or entity conducting telephone solicitations shall pay
 4 the commission a fee of ten dollars per year for access to the data base established under this
 5 section. There may not be an additional charge for electronic copies of the data base. The
 6 commission, however, may charge a cost not to exceed twenty-five cents per page for paper
 7 copies of the data base. Information contained in the data base established under this section
 8 may be used only for the purpose of compliance with this Act or in a proceeding or action under
 9 this Act. Except as herein provided, the information is not subject to public inspection or
 10 disclosure under section 44-04-18.

11 **49-24-06. Identification by caller.** A person or entity who makes a telephone
 12 solicitation to the telephone line of any residential subscriber in this state, at the beginning of
 13 the call, shall state clearly the identity of the ^{seller; that the purpose of the} person and entity initiating the call and the identity
 14 ^{call is to sell goods or services; and the nature of the} of the person or entity on whose behalf the call is made. ~~The identity of the person calling must~~
 15 ^{goods or services.} include the true first name and surname. Upon request, the caller shall provide a valid
 16 telephone number ^{or} and valid street and mailing address ^{at which} for both the person or entity ^{may} initiating
 17 ^{be contacted.} the call and the person or entity on whose behalf the call is made. ~~A telephone solicitation may~~
 18 ~~not be terminated without first disclosing the identification as herein provided.~~ A person or
 19 entity who makes a telephone solicitation to the telephone line of a residential subscriber in this
 20 state may not utilize any method to block or otherwise circumvent the subscriber's use of a
 21 caller identification service. *See Federal laws*
X and X

22 **49-24-07. Cease and desist orders - Civil penalties - Hearing.** If it appears to the
 23 attorney general, either upon complaint or otherwise, that any person or entity has engaged in,
 24 is engaging in, or is about to engage in any act or practice prohibited by this Act or by any order
 25 of the attorney general issued under this Act, the attorney general may:

- 26 1. Issue any cease and desist order, which the attorney general deems necessary or
 27 appropriate in the public interest, including if any person or entity fails or refuses to
 28 file any statement or report, or obey a subpoena issued by the attorney general
 29 pursuant to this chapter.
- 30 2. Impose by order and collect a civil penalty against a person or entity found in an
 31 administrative action to have violated a provision of this chapter, or a rule or order

City-Sixth
Legislative Assembly

1 adopted or issued under this chapter, in an amount not to exceed two thousand
2 dollars for each violation. The attorney general may bring an action to recover
3 penalties pursuant to this section in district court. A person or entity aggrieved by
4 an order issued pursuant to this subsection may request a hearing before the
5 attorney general if a written request is made within ten days after receipt of the
6 order. All administrative proceedings under this chapter must be conducted in
7 accordance with chapter 28-32 unless otherwise specifically herein provided.

8 **49-24-08. Powers of attorney general to investigate - Rules.** To accomplish the
9 objectives and to carry out the duties prescribed by this chapter, the attorney general may:

- 10 1. Require a person or entity to file, on forms the attorney general prescribes, a
11 statement or report in writing, under oath or otherwise, of all the facts and
12 circumstances concerning that person's or entity's business activities or practices,
13 as well as other data and information the attorney general may determine
14 necessary.
- 15 2. Examine under oath any person or entity in connection with telemarketing or
16 telephone solicitations in this state.
- 17 3. Examine any record, book, document, account, or paper as the attorney general
18 may determine necessary.
- 19 4. Pursuant to an order of a district court, impound any record, book, document,
20 account, or paper material to the person's or entity's business activities or practices
21 and retain the same in the attorney general's possession until the completion of all
22 proceedings undertaken under this section or in the courts.
- 23 5. Issue subpoenas to any person or entity, administer an oath or affirmation to any
24 person, and conduct hearings in aid of any investigation or inquiry concerning
25 violations of this chapter, and prescribe forms and adopt rules as may be
26 necessary.

27 **49-24-09. Costs recoverable.** In an action brought under the provisions of this
28 chapter, the attorney general is entitled to recover costs, expenses, and attorney's fees incurred
29 by the attorney general in the investigation and prosecution of the action.

30 **49-24-10. Private enforcement.** A person who has received more than one telephone
31 solicitation within any twelve-month period by or on behalf of a person or entity in violation of

Fifty-sixth
Legislative Assembly

1 section 49-24-02 or 49-24-06 may either bring an action to enjoin the violation; bring an action
2 to recover for actual monetary loss from the violation or to receive up to two thousand dollars in
3 damages for each violation, whichever is greater; or bring both actions. If the court determines
4 a person or entity is in violation of section 49-24-02 or 49-24-06, the court may award the
5 plaintiff costs, expenses, and attorney's fees.

6 **49-24-11. Limitation of actions.** An action or proceeding may not be brought under
7 section 49-24-08 or 49-24-10:

8 1. More than two years after the person bringing the action knew or should have
9 known of the occurrence of the alleged violation; or

10 2. More than two years after the termination of any proceeding or action by the state,
11 whichever is later.

12 **49-24-12. Nonexclusive remedies and penalties.** The remedies, duties, prohibitions,
13 and penalties of this Act are not exclusive and are in addition to all other causes of action,
14 remedies, and penalties in chapter 51-15 or otherwise provided by law.

15 **49-24-13. Caller identification service nonliability.** A provider of telephone caller
16 identification service may not be held liable for violations of this Act committed by other persons
17 or entities.

18 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on August 1, 1999, for
19 purpose of administrative establishment of the data base, including receipt of notices, by the
20 public service commission and becomes effective for all other purposes on August 1, 2000.

S.B. 2256

Presented by: Mel A. Kambeitz
U S WEST

Before: Industry, Business and Labor
Senator Duane Mutch, Chairman

Date: January 26, 1999

TESTIMONY

Mr. Chairman and committee members, I am Mel Kambeitz, Director of Public Affairs for U S WEST in North Dakota. I appear on behalf of U S WEST in support of SB 2256 with the addition of amendments.

Senate Bill 2256 would allow the Public Service Commission to establish a database of telephone subscribers who object to telephone solicitations. Part of the bill would allow the Public Service Commission to establish rules by which the Commission could specify how notice must be given to subscribers to be included in the database, how the subscriber could give notice to the Public Service Commission to be included in the database, and methods by which objections and revocations are collected and added to the database.

- There is nothing in the bill that limits how the Public Service Commission could require these notices; objections and revocations would be provided.
- The Commission could seek to impose these obligations on the local phone company through billing inserts or billing disclosures.

- The Public Service Commission could require the local telephone company to be the go-between for subscribers and the Public Service Commission for maintaining this database.
- Bill inserts and disclosures are expensive and limit what U S WEST can include in its bills.
- There would be substantial administrative expense to act as conduit between subscribers and the Public Service Commission.
- There is nothing in the bill that provides a means for local telephone companies to recover those costs.

PROPOSED AMENDMENTS TO S.B. 2256

Page 2, line 8, after “solicitations” add “provided the commission may not require a telecommunications company to provide such notification to its subscribers”

Page 2, line 11, after “notice” add “provided the commission may not require a telecommunications company to receive such notice from its subscribers”

Page 2, line 15, after “base” add “provided the commission may not require a telecommunications company to receive or collect such objections and revocations from its subscribers”

Page 1, after line 17, insert:

4. “Telecommunications company” means a company that meets the definition of subsection 12 of section 49-21-01.

Renumber accordingly.

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
JANUARY 26, 1999

TESTIMONY OF
DAVID W. HUEY
ASSISTANT ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL 2256

Mr. Chairman and members of the committee, I am Dave Huey, an assistant attorney general. For the past 11 years I have been litigation counsel for the Consumer Protection and Antitrust Division of the Attorney General's Office. I have been asked by the Attorney General to testify before this committee in support of SB 2256.

Whenever the Legislature considers a bill, there are two general considerations. The first is a public policy issue. Is there a problem? How should it be addressed? What is the appropriate public policy in the particular area addressed by the bill? The second question is one of draftsmanship. That is, assuming we support a particular public policy, what is the best way to go about implementing that policy and how should it be worded?

As one who is charged with implementing public policy as established by the Legislature, I am more concerned generally with this latter issue. If legislation is cumbersome or poorly drafted, I am one of those who must deal directly with that problem in the performance of my assigned duties. It is because of the experience of our office in this area that we were asked by the PSC to assist in drafting this bill and it why I have been asked to testify this morning. In drafting this bill, we consulted statutes from other states and we had numerous sessions with the PSC and their staff where we reviewed the pros and cons of each provision. The result, from a technical standpoint, is I believe a well-drafted bill.

But before I get into a technical discussion of this bill's specific provisions, I would like to say a brief word about the public policy the bill advances.

In this country we have something called private property. The institution of private property is an old and honorable one. Indeed, it predates our country's existence. It is the very hallmark of the liberty we enjoy in this country and of the freedoms for which we stand. It is no exaggeration to say that private property is one of the foundations upon which the United States of America is based.

Now, private property doesn't simply just happen. Rather it exists because of a conscious choice by public policy makers, federal, state and local. To prevent someone from taking your private property, we have laws against theft. To prevent the government from taking your property we have laws requiring just compensation. To prevent someone from using your property without permission, we have laws against conversion and trespass. To allow you to control the disposition of your property, we have laws regarding the sale, encumbrance and inheritance of private property.

This bill seeks to protect the private property interest of North Dakotans in their telephones. Not long ago, North Dakotans did not own their telephones. They belonged to the telephone company. Then came the revolution called deregulation and North Dakotans gained private property ownership rights in their telephones.

But the right to own property means nothing if that right is not legally protected. This bill protects the private property rights of North Dakotans in their telephones. It allows North Dakotans to prevent others from using their phones for purposes they consider annoying or unwelcome.

This bill protects those private property rights by allowing North Dakotans to place their name on a "do not call" list. It allows them to prohibit others from using their

private property for commercial purposes not approved of by the telephone's owner.

In my job as counsel to the Attorney General's Consumer Protection Division, I speak with North Dakota consumers on a daily basis. Division receptionists, investigators and complaint analysts speak to hundreds more each day.

One of the most common topics of calls we receive from North Dakotans is telephone solicitations. Many of those who call ask us how they can prevent what they consider the annoying intrusions of telephone solicitors into their homes. We tell them about the voluntary "do not call" list maintained by the Direct Marketing Association. We offer to provide forms to be filled out and sent into that organization.

For many who call our office, however, this is not an acceptable solution. They are disappointed when they learn that observance of the "do not call" provisions is optional and limited primarily to DMA members. Generally, these people are looking for mandatory relief that is comprehensive and enforceable. This bill would meet those criteria. This bill would give meaningful protection to the private property rights North Dakotans enjoy in their telephones.

Now, let me quickly take you through each of the bill's sections. Please feel free to interrupt me if you have questions about any of the bill's specific provisions.