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Memorandum

TO: Ivan Misner, Ph. D.
FROM: Marc H. Goldsmith
DATE: September 17, 2003
FILE NO.: BNIENT.01
RE: BNI Enterprises, Inc.
FTC Do Not Call Rules

Overview

The Federal Trade Commission (FTC) issued the amended Telemarketing Sales Rule (TSR) on January 29, 2003. The amended Rule gives effect to the Telemarketing and Consumer Fraud and Abuse Prevention Act. The main purpose of this law is to give the FTC and state attorneys general law enforcement tools to combat telemarketing fraud, give consumers added privacy protections and defenses against unscrupulous telemarketers, and help consumers tell the difference between fraudulent and legitimate telemarketing. Perhaps the most significant amendment to the TSR is to prohibit the calling of consumers who have put their phone numbers on the National Do Not Call Registry.

The FTC's National Do Not Call Registry has been accepting registrations from consumers who choose not to receive telemarketing sales calls since June 27, 2003. Consumers can place their telephone numbers on the National Registry by making a toll-free telephone call or via the Internet. Consumer registrations are valid for five years, or until the consumer asks to be taken off the National Registry or the number is disconnected. Only telephone numbers are included in the National Registry. This means that *all* household members who share a number will stop receiving most telemarketing calls after the number is registered. Consumers may register both their residential "land line" telephone numbers and their wireless telephone numbers.

It is a violation of the Rule to make any covered calls beginning October 1, 2003 without having accessed the Registry. Sellers and telemarketers must update their call lists at least every three months. Although sellers, telemarketers, and their service providers have been able to access the Registry through a dedicated Web site since September 2003, as of October 1, 2003, sellers and telemarketers are prohibited from calling any consumer whose number is in the database. Violators will be subject to civil penalties of up to \$11,000 per violation, as well as injunctive remedies.

Conclusions:

The good news is that the Do Not Call provision should *not* affect most or all referrals given by BNI members for several reasons.

1. The Do Not Call provision *does not apply to business-to-business calls*. The only exception is for business-to-business calls to "induce the retail sale of nondurable office or cleaning supplies." Examples of nondurable office or cleaning supplies include paper, pencils, solvents, copying machine toner, and ink. Goods such as software, computer disks, copiers, computers, mops, and buckets are considered durable because they can be used again.
2. There is an "established business relationship" exception to the National Do Not Call provisions. *A BNI company member may call a consumer with whom it has such a relationship, even if the consumer's number is on the Registry*. That call may be to refer the consumer to another BNI member, and/or to follow up on such a referral. In either case, that call is exempt from the Do Not Call provisions.
3. *If the consumer gives a company express written permission to call them*, that call is exempt, even if the consumer's number is on the Registry.

If you would like more information about complying with the Do Not Call provisions of the TSR, please refer to the FTC's Web site at www.ftc.gov/donotcall.