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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of: )

The Telephone Consumer )  
Protection Act of 1991 )

CC Docket No. 92-90

ORIGINAL  
FILE

COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its comments on the Notice of Proposed Rulemaking (NPRM) released April 17, 1992 in the above-referenced proceeding.<sup>1</sup> USTA is the principal trade association of the exchange carrier industry. Its membership of approximately 1100 telephone companies provides over 98 percent of the telephone company-provided local access lines.

The NPRM contains proposed regulations to implement the Telephone Consumer Protection Act (TCPA) of 1991.<sup>2</sup> The purpose of the legislation is to protect the privacy rights of telephone subscribers by restricting certain unsolicited automated commercial telephone calls. USTA provides the following comment on the Commission's proposal.

<sup>1</sup> The Telephone Consumer Protection Act of 1991, CC Docket No. 92-90. Notice of Proposed Rulemaking released April 17, 1992, FCC 92-176, summarized at 57 Fed. Reg. 18445 (April 30, 1992).

<sup>2</sup> P.L. 102-243, amending Title II of the Communications Act of 1934, 47 U.S.C. §201 et seq. by adding new Section 47 U.S.C. §227.

First, any regulations ultimately adopted should be clear in assigning the responsibility for protecting subscribers from receiving unwanted telephone solicitations made illegal by the TCPA to the telemarketers who make such calls. Exchange carriers should not be required to police or enforce the TCPA. The need to protect consumers from illegal telemarketing calls results directly and exclusively from the activities of telemarketers. Any costs to implement regulations necessary to protect consumers from such calls must be borne by telemarketers and not by exchange carriers or their subscribers.

As was noted in the Report of the Senate Committee on Commerce, Science and Transportation, "[t]he telephone companies usually do not know when their lines are being used for telemarketing purposes, and, even if they did, it is questionable whether the telephone companies should be given the responsibility of preventing such calls by monitoring conversations."<sup>3</sup> There is no indication in the Senate Report that Congress intended for exchange carriers to implement the TCPA. Exchange carrier networks are not capable of recognizing and blocking automated telemarketing calls, and exchange carriers do not control or even have knowledge of the content of the calls on their networks. Telemarketers themselves should be responsible for implementing and enforcing the provisions of the TCPA.

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<sup>3</sup> S. Rep. No. 178, 1020 Cong. 1st Sess., at 1-2 (1991).

Second, the Commission discusses several alternative methods to protect TCPA-identified customer privacy rights from unwanted telephone solicitations as specified in the Act. USTA does not favor the creation of a national, mandatory data base of customers who object to receiving telephone solicitations. The development and maintenance of such a data base would be costly and it is not clear if and how those costs would be recovered.<sup>4</sup> If such a data base was created, the regulations should specify that telemarketers are responsible for all the costs of developing the data base, including inputting the necessary data, and of operating and maintaining it, including ensuring that the data is accurate.

Methods to prevent illegal telemarketing calls which could be expanded upon and maintained by telemarketers already exist. For example, many large companies, including some telephone companies, subscribe to a list of persons who do not want to receive telemarketing calls. The list is maintained by the Direct Marketing Association. It seems unnecessary to incur the costs of developing a mandatory national data base which might duplicate established voluntary efforts.

Another alternative suggested by the Act and discussed in the NPRM is the use of telephone network technologies to screen

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<sup>4</sup> The Act specifically prohibits residential subscribers from being charged for participating in and withdrawing from a national data base.

unwanted telephone solicitations. The Commission asks for comment on whether telephone prefixes, area codes and central office arrangements could enable customers to screen unwanted telemarketing calls. Such uses of network technologies would be expensive and disruptive to customers -- the same persons the TCPA was enacted to protect.

Using a specific prefix or unique area code for telemarketers could not be supported by the North American Numbering Plan (NANP). Such proposals would prematurely exhaust the ten digit NANP. This could result in the premature expansion of the number of digits in the NANP which would have a devastating impact on every telephone customer due to number changes and increased costs to support the changes which would be required in telephone plant and support systems. Such a proposal would require costly software and hardware changes in the telephone equipment of many telephone companies - costs that far outweigh the benefits and that can be avoided by using other methods. Considering the investment businesses have made in advertising, signs, stationery and other business-related communications to inform customers of their telephone numbers, to require changes in telephone numbers would be catastrophic for the nation's businesses.

Further, the current network signaling architecture which uses both multifrequency and Signaling System 7 (SS7) does not

always transmit the data which would be required to identify and screen telemarketing calls in such a fashion. While a ubiquitous SS7 network, appropriately programmed, could provide limited ability to screen certain calls, that, too will involve significant cost. Telephone companies should be allowed to determine if there is sufficient demand to justify offering such a feature and whether the costs of such an offering could be recovered from the cost causers. The uneconomic deployment of advanced signalling technology in locations otherwise not supported by customer demand would significantly impact local service. It would be inefficient and uneconomic for the Commission to require changes in the NANP or the telephone network to implement the TCPA. It would be unfair to allow telemarketers to avoid paying those costs.

Finally, the remaining alternatives should be analyzed on the basis of whether or not they could be adequately performed by telemarketers. Exchange carriers should not be required to bear the costs necessary to implement them.

Third, the Commission should clarify the emergency exception contained in the Act. The emergency exception should be interpreted so as to include a telephone company-provided automatic line feature whereby subscribers predesignate an emergency number which would be dialed automatically if the telephone receiver is off-hook for a specific amount of time.

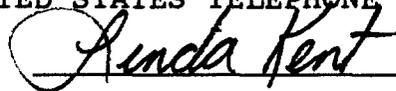
This feature allows the customer to use the telephone normally, but to automatically call a predesignated emergency number by simply keeping the telephone off-hook for thirty seconds. This would enable customers to receive assistance in the event that sickness, injury or other emergency circumstance would prevent the customer from dialing.

In conclusion, in implementing the TCPA, the responsibility for achieving its objectives correctly and fairly rests with the telemarketers.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By

A handwritten signature in cursive script, appearing to read "Linda Kent", is written over a horizontal line.

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