

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

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MAY 26 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

COMMENTS OF U S WEST COMMUNICATIONS, INC.

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1992-05-26

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meantime, U S WEST urges the Commission to investigate further if it is possible to utilize such a service as a foundation for further inquiry into the prevention of unwanted telephone solicitation calls.

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U S WEST Communications, Inc. ("U S WEST") hereby files these comments regarding the above-captioned docket.

I. MATTERS PERTAINING TO AUTO DIALERS

The Federal Communications Commission ("Commission") seeks comment on the extent to which it should make explicit an exception pertaining to the use of auto dialers for calling parties who have an "existing business relationship" with the

adversely affected where the called party has or had a voluntary business relationship with the caller."² Thus, we support the creation of an exemption "for calls placed by a caller, or on behalf of a caller, to its clientele[,]"³ regardless of whether the clientele is a consumer or a business.⁴

Within the context of auto dialed calls from one entity to another, the Commission seeks comment on when a "business relationship" exists as between two parties.⁵ Noting that such a

²Id. at ¶ 14.

³Id. (footnote omitted). As the Commission has correctly observed, such an exemption would also provide an "exemption for debt collection calls[.]" Id. at ¶ 16.

U S WEST is of the opinion that prohibiting all commercial speech via an auto dialer is probably unconstitutional. While the Commission might be able to fashion certain restrictions (i.e., calls from commercial establishments that do not involve advertising or calls from establishments with an existing

relationship seems obvious when the "exchange of consideration" is involved,⁶ the Commission inquires whether a "business relationship" might be construed more broadly.⁷

U S WEST believes that for purposes of defining a "business relationship" within the context of auto dialed calls, that a reasonable position would be to require the "exchange of consideration" as a component of the relationship, but construe somewhat broadly the time period during which that "exchange" is

required to have taken place within the auto dialed context

history when describing "existing business relationships" in the context of "live" solicitations),⁹ renders our proposal reasonable in balancing commercial speech and solitude. A prior "exchange of consideration" is a far more significant voluntary act evidencing a business relationship than is an "inquiry."¹⁰ By adopting such a rule, U S WEST believes that the Commission can strike a reasonable balance between what Congress determined

concerns."¹³

II. TELEPHONE SOLICITATION TO RESIDENTIAL SUBSCRIBERS

The Commission notes that it might not be necessary to do anything very intrusive with regard to "live" telephone solicitations, once it puts its auto dialer rules in place, because the bulk of the consumer complaints about telephone solicitations seems to result from auto dialer calls.¹⁴ However, the Commission does pose five possible methods of dealing with the issue, and requests "rigorous analysis" with regard to each.¹⁵

Unfortunately, U S WEST is not in the position to undertake such a rigorous analysis regarding each of the five possibilities. We do not find any of the proposed alternatives particularly attractive. We have some fundamental ideological difficulties with those who attempt to require local exchange carriers ("LEC"), as telephonic network providers, to act as capital funding agents or arbiters with regard to some relational problems vis-a-vis the telemarketing industry and consumers. Thus, we are not in a good position to provide the Commission with "cost" information. Frankly, we have not quantified the

¹³Id. Such an exception would permit the use of auto dialers for debt collection purposes. The exception would also permit commercial calls in those circumstances in which there is no existing business relationship and no attempt to sell.

¹⁴See id. at ¶¶ 24, 26.

¹⁵See id. at ¶¶ 28, 30, 31.

costs associated with the proposed alternatives. Nor do we think that the LECs should be expected to undertake such quantification, unless the benefit of some particular

Before examining the alternatives, however, U S WEST was surprised that the Commission did not include, as one of its possible alternatives, that consumers be advised of the Direct Marketing Association's ("DMA") Telephone Preference Service.¹⁷ Given the fact that currently this is the most widely used vehicle available to consumers to express their desire not to receive telemarketing calls, the absence of a reference to it is surprising.

Consumers communicate with DMA that they want to be included in the DMA's Telephone Preference Service. The DMA then makes available, to any interested purchaser (whether a member or not),¹⁸ tapes of customers who have asked to be put on "The List." Currently the list contains about 400,000 to 430,000 names, and is available for purchase for approximately \$280.00 to \$350.00. The List is updated quarterly, and it is expressly limited in terms of its use in removing customers' names from

LECs, like U S WEST, advise customers about its existence;¹⁹ and it already crosses a number of different industry segments.²⁰ While the Commission might deem it necessary to increase customer education about this vehicle,²¹ the vehicle itself should be considered seriously.

A. Databases

U S WEST has not been a past supporter of federal legislative proposals to create national "Do Not Disturb" databases, especially to the extent that the legislative proposals sought to impose on the LECs any responsibility for monetarily supporting (either in the creation or maintenance) such a database, or to require LECs to advise consumers of the existence of such a database,²² or to compel LECs to facilitate a

¹⁹We do this through the White Pages and on calls where customers complain about receiving calls from us or from other telemarketers.

²⁰While the House Report appears to find that this service is not a very satisfactory alternative (see House Report at 19-20), in U S WEST's opinion, it might very well represent the best "place to start" with regard to the promulgation of any national "do not call" list.

²¹U S WEST would not support imposing a mandatory requirement on the LECs to provide such "education." Fundamentally, this kind of educational effort seems to be one that should be provided at the expense of the telemarketing industry. See further nn. 22-23 *infra*. However, U S WEST does not have a problem in providing such information to customers voluntarily, if, when and how we choose to do so. See n.19 *supra*.

²²Thus, U S WEST would not support a proposal requiring LECs to "absorb the cost of bill or directory inserts[,]'" (House
(continued...)

consumer being added to such a database.²³

²²(...continued)

Report at 21, Database Cost Assumptions, No. 6) or to include machine-readable postcards in their directories (id. at 22-23). See also S. 1410 Senate Report at 7-8 (B), (C), (L), stating that LECs would be required to "inform subscribers . . . of the opportunity" to be on such a list; and would have deferred to the Commission the obligation of determining how the LECs should advise such subscribers; and would have further required the LECs "to notify . . . person[s] of the requirements" of the proposed federal legislation. Nor are we certain that LECs could be compelled to carry such a message, if they believed that such message was contrary to their overall corporate business interests or otherwise contrary to a telemarketing message that they might prefer to send (see Pacific Gas & Elec. v. P.U.C. of California, 475 U.S. 1, 9-20 (1986)). Such expenses should be borne totally by the telemarketing industry, who can contract for television and/or radio time or with the LECs (should that be desirable) to lend their directories and/or their bills (for a fee) to any consumer education effort that the telemarketing industry is required to pursue (and with regards to which they bear all compliance obligations).

²³Similarly, U S WEST opposes any requirement that the LECs "assist in maintenance [of such database] through the new service hook-up and service disconnect interviews." House Report at 21, Database Cost Assumptions, No. 9. U S WEST currently provides new-connection and service disconnection information on published customers to third parties, particularly with a view to providing this information to directory publishers. However, a third party marketer could purchase this information and could send written material to newly connected customers advising them of their "rights" under any legislative or regulatory mandate. Furthermore. to the extent that non-published or non-listed

U S WEST does not consider it appropriate to use LEC funds, i.e., those of the national network providers, to solve a relational problem between consumers and telemarketers.²⁴ We remain of that position.²⁵

Since, as the Commission has observed, Congress has deemed it appropriate to relieve residential consumers of any obligation to fund such a database,²⁶ and in light of the legislative history and findings that "live" solicitations present fewer privacy problems than auto dialed ones, U S WEST would encourage the Commission to refrain from pursuing a "database" solution

²³ (...continued)
telemarketing are strongly correlated to how the question is asked. See Attachment I, appended hereto. The LECs should not,

(whether national or regional), until such time as the Commission can determine if the "problem" sought to be solved remains a problem.²⁷

B. Network Technologies

U S WEST does not believe it is practical to require all telemarketing operations to utilize a single telephone prefix.²⁸

technology is complemented by existing LEC and interexchange carrier ("IXC") voice mail offerings. These technological solutions should also be considered when reflecting upon alternatives.

C. Special Directory Markings

U S WEST is not altogether certain of the extent to which special directory markings provide consumers with a satisfactory

U S WEST a "list" of the "directory-marked" consumers. In essence, these telemarketers want an Oregon "do not call" "list" (or, alternatively, a database). Thus, U S WEST is being requested to expend more and more funds to "fine tune" the relational problems between the called and calling party.³¹ While there should not be anything prohibiting a LEC which desired to offer this kind of service to a telemarketer from doing so, U S WEST does not believe that LECs should be required to provide such service. And, we believe that marking directories, without someone providing a kind of correlated "list" service, is probably only addressing the perception side of the problem and not the solution.³²

D. Industry-based or Company-specific Do Not Call Lists

U S WEST would again recommend that the Commission consider the DMA Telephone Preference Service List as a reasonable alternative, or at least a good place to start, to accomplish the purposes discussed in this and the preceding section.

U S WEST does indicate on our "listing" products³⁴ those customers who have advised us that they wish to be deleted either from direct marketing lists, telemarketing lists or both.³⁵ At the wholesale level, however, we do not "match" the list that we sell against the DMA list.³⁶

U S WEST would assume that in many cases, the customers who have contacted us have also contacted the DMA.³⁷ Thus, it is quite possible that the combination of the Commission's finally-

does not support a legislative or regulatory mandate that LECs be required to compile, either in a list or database form, "do not call" lists.

E. Time of Day Restrictions

U S WEST agrees with the Commission that such restrictions "place minimal constraints on telemarketers."³⁸ However, we also agree that such restrictions are probably not "necessary."³⁹ Thus, we see no reason to mandate such restrictions as a matter of formal regulation.⁴⁰

III. CONCLUSION

Based on the above comments, U S WEST would recommend that the Commission establish regulations permitting the use of auto dialers with regard to calls from commercial establishments to called parties when there is an existing business relationship, or when the call -- while coming from a commercial entity -- does not involve commercial content.

~~Furthermore, we would recommend that the Commission also~~

operational in the marketplace before it pursues any further the concepts of databases, "do not call" lists and the like on either a national, regional or company-specific basis. In the meantime, we would urge the Commission to investigate further the DMA's Telephone Preference Service to determine if it is possible to utilize such a service as a kind of foundation for further inquiry into the prevention of unwanted telephone solicitation calls.

Respectfully submitted,
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ATTACHMENT I

THE
EQUIFAX REPORT
ON CONSUMERS IN THE
INFORMATION AGE



WHETHER USE OF NAMES AND ADDRESSES BY DIRECT MARKETERS IS ACCEPTABLE: PUBLIC

Increasingly, companies are marketing goods and services directly to people by mail. Some reasons for this trend are that many people have less time to shop or they prefer to make shopping decisions at home. Also, companies are trying to reduce their costs of advertising and selling in stores, and they find direct marketing can reduce their expenses and their product prices.

Companies try to learn which individuals and households would be the most likely buyers of their products or service. They buy names and addresses of people in certain age groups, estimated income groups, and residential areas with certain shopping patterns so they can mail information to the people they think will be most interested in what they are selling. Do you find this practice acceptable or unacceptable?

	Base	Acceptable %	Unacceptable %	Not Sure %
Total Public	2253	67	31	2
Sex				
Male	1018	67	30	2
Female	1235	67	31	2
Age				
8-29 years	505	79	20	1
30-49 years	990	70	28	2
50 years and over	734	54	42	3
Education				
Less than high school	264	62	35	3
High school graduate	794	69	30	2
Some college	570	67	31	3
College graduate	357	75	24	1
Postgraduate	253	64	34	2
Race				
White	1934	66	31	2
Black	186	70	27	3
Hispanic	133	69	29	2
Household Member				
Bought/Responded to credit offer by mail	883	76	23	1
Hasn't bought/responded to credit offer by mail	1345	61	36	3

A series of follow-up questions addressed only to those people who found the practices "unacceptable" explored whether their misgiv-

would be "acceptable" if people not wanting to receive these offers by mail could have their name excluded

In the second series of questions, the practices used by credit card issuers in pre-screening potential customers were presented in the following manner: "Credit card issuers also market directly to consumers. To make sure that they send information only to people who qualify, they ask credit bureaus to tell them which individuals meet their credit standards before they send a credit offer." By a better than two-to-one margin (66-32%), Americans

find this practice "acceptable." Substantial majorities of at least 60% of all demographic segments of the population say this practice is "acceptable." Those living in households where someone in the past year has purchased goods or services or responded to an offer of credit by mail are only slightly more likely to find this practice "acceptable" (69%) than people in households where nobody has (64%).