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Federal Communications Commission
Office of the Secretary

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

In the Matter of	)	
	)	
The Telephone Consumer Protection Act of 1991	)	CC Docket No. 92-90
	)	

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rulemaking in the above proceeding ("Notice") (FCC 92-176), released April 17, 1992. The Federal Communications Commission ("Commission") seeks comments on implementing regulations in connection with the Telephone Consumer Protection Act of 1991 ("TCPA") and proposes exemptions to the prohibitions of the statute.

NTCA is an association of over 490 small exchange carriers ("ECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. NTCA's comments will be limited to Part III (F) of the Notice which contains the Commission's proposals to adopt mechanisms for protecting residential subscribers from telephone solicitations to which they object and to the Commission's Initial Regulatory Flexibility Analysis.

I. THE COMMISSION SHOULD ADOPT RULES THAT PLACE THE BURDEN OF TCPA COMPLIANCE ON TELEMARKETERS.

The TCPA requires the Commission to conduct a rulemaking to consider the need to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they

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object. Among the alternatives which the Notice proposes as measures to protect residential subscribers from unsolicited calls are the generation of databases of "do not call lists," the use of special directory markings, network technologies and time of day restrictions. NTCA urges the Commission to place the obligation for compliance on telemarketers regardless of the alternative it adopts. In the case of "do not call lists" or directories with special markings, in particular, ECs should not be required to bear the additional costs of these options or to administer the programs.[1]

The TCPA is directed at and intended to place obligations and impose sanctions on the maker of the call rather than the carrier. Ecs are not in a position to know whether or when calls from particular tlemarketers are unwanted. Any costs incurred in connection with carrying out the Congressional purpose of protecting consumers from invasive calls should be placed squarely on the makers of invasive calls.

Section 3 of the TCPA makes it clear that this is what Congress intended. Section 3(c)(5) protects telemarketers who

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[1] Telephone companies should not have to collect information from subscribers who do not want to receive calls encouraging the purchase or rental of, or investment in, property, goods, or services. Telemarketers, not telephone companies, solicit and talk with the subscriber and are in the best position of knowing if a call is not welcome. In addition, telemarketers have access to marketing data and research which enable them to identify subscriber preferences. They are in the best position to compile "do not call lists." Telephone companies should not be in the business of policing telemarketers or judging whether a "yes" or "no" answer in a survey means the subscriber will take calls from one type of telemarketer but not another.

comply with the Act and Commission regulations. That subsection provides an affirmative defense for telemarketers who have "established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations" in violation of Commission rules adopted to protect residential subscriber privacy rights. This defense is available in the State court actions authorized under Section 3(c)(5). NTCA recommends that the Commission adopt a rule providing for a similar defense in any complaint proceeding brought at the Commission.

II. THE COMMISSION SHOULD CONSIDER THE IMPACT OF ANY ALTERNATIVE ON SMALL TELEPHONE COMPANIES AS WELL AS OTHER SMALL ENTITIES.

The Commission also seeks comments on its Initial Regulatory Flexibility Analysis, Appendix C of the Notice. In that Analysis, the Commission states that its proposed rule could affect the telemarketing practices of numerous businesses, including small entities. NTCA urges the Commission to recognize that small telephone companies are also among the "small entities" that could be affected by the rules.[2] In view of this, the Commission should consider and explain how the alternatives it ultimately adopts will minimize adverse economic impacts and reduce regulatory burdens on small telephone companies.

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[2] See, 5 U.S.C. § 601(6) and 15 U.S.C. § 632(a). A "small entity" under the Regulatory Flexibility Act is a "small concern" as determined by the Small Business Administrator.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to refrain from adopting regulatory alternatives which would require that ECs collect information for "do not call lists," maintain databases of these lists or publish directories with special markings.

Respectfully submitted,

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May 26, 1992

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 92-90 was served on this 26th day of May 1992, by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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