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MAY 26 1992

Federal Communications Commission
Office of the Secretary

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments regarding the Notice of Proposed Rulemaking in the
Matter of the Telephone Consumer Protection Act of 1991
OC Docket No. 92-90

Ladies and Gentlemen:

MBNA America Bank, N.A., and MBNA Marketing Systems, Inc. file the following comments regarding the Notice of Proposed Rulemaking in the Matter of the Telephone Consumer Protection Act of 1991 (the "TCPA").

Background

MBNA America Bank, N.A., is the country's third largest issuer of bank credit cards. It has no branches; all of its products are offered by telephone or through the mail. MBNA Marketing Systems, Inc. telemarkets credit card, retail deposit, individual loan and other services on behalf of MBNA America Bank, N.A., from facilities located in Newark and Dover, Delaware, Baltimore, Maryland and Atlanta, Georgia. MBNA Marketing Systems, Inc. is a leader in the telemarketing industry.

MBNA America Bank, N.A., using MBNA Marketing Systems, Inc. as its telemarketer, markets its credit cards and other services primarily through affinity groups (organizations of people with common interests) and financial institutions. At March 31, 1992, more than 2,500 membership organizations and financial institutions with more than 90 million members endorsed MBNA America Bank, N.A., and its products. During 1992 MBNA Marketing Systems, Inc. representatives will speak by telephone to more than 7 million of these members. It is essential to the success of MBNA America Bank, N.A. that every one of these calls be a satisfactory experience to each member of each endorsing organization so that the members will become our Customers and

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our relationships will be preserved with the endorsing groups. Accordingly, the primary focus of MBNA Marketing Services, Inc. is to satisfy our Customers and we share the concerns which led to the enactment of the TCPA.

To ensure Customer satisfaction, all MBNA Marketing Systems, Inc. telemarketing representatives participate in an initial two-week education course and quarterly two-day additional education sessions. Courtesy to Customers is emphasized during these sessions. In addition, supervisors periodically monitor calls to ensure courtesy and compliance with legal requirements. Incentive programs for representatives reward Customer satisfaction.

Generally, we agree with the approach to implementation of the TCPA set forth in the Notice of Proposed Rulemaking. We believe that the Commission has fairly and appropriately balanced the privacy rights of individuals and the free speech rights of telemarketing organizations. Several comments are set forth below.

Auto Dialers

It is important not to confuse the term "auto dialer" with "automatic dialer and recorded message player" (ADRMP). An "auto dialer" or "predictive dialer" may or may not be used with a recorded message player.

MBNA Marketing Systems, Inc. utilizes an Outbound Call Management (OCM) system to maximize its telemarketing efforts. The system enables us to screen no connect telephone signals, through the use of an auto dialer or predictive dialer, thus enhancing our efficiency. When a Customer is reached, the call is delivered to a representative immediately. No recorded message of any kind is used.

The use described above of an "auto dialer" or "predictive dialer" is not intended to be prohibited by the TCPA. The TCPA prohibits the use of auto dialers to call residences only when used with a recorded message. The Notice of Proposed Rulemaking states that during 1991 the bulk of telephone solicitation complaints, and the majority of complaints alleging fraud or deceptive practices, received by the FCC related to recorded messages (ADRMP). In comparison, the Commission received only 74 complaints generated by live solicitations. We urge the Commission to adopt regulations which, consistent with TCPA, do not prohibit use of an "auto dialer" or "predictive dialer" when no recorded message is used.

In connection with its past due loan collection calls, MBNA America Bank, N.A., also uses a "predictive dialer." If all representatives are busy, a prerecorded message introduces the call and asks the recipient of the call to hold for a representative. Although the numbers vary depending on time of day and other factors, a recorded message is used for approximately 10% to 15% of the calls and in these cases the delay ranges from 10 to 20 seconds. As noted in the Notice of Proposed Rulemaking, the use of this system "increases the efficiency of the collector . . . and is beneficial to the called party." The Fair Debt Collection Practices Act protects consumers from harrasing collection calls. We agree with the Commission that auto dialing in connection with collection calls was not intended to be prohibited by the TCPA. We believe that the Commission's proposed exemption for calls to a person with whom the caller has a "business relationship" is broad enough to implement this interpretation and presents no definitional problem in this context. We strongly support the proposed exemption.

Telephone Solicitation to Residential Subscribers

As the Commission notes, unsolicited sales calls generated \$435,000,000,000 in sales in 1990 (a more than four-fold increase since 1984). Therefore, many consumers find such contacts beneficial and actually purchase the goods and services which are offered.

Of the five potential mechanisms which the Commission has identified to restrict live operator telephone solicitations, MBNA Marketing Systems, Inc. currently utilizes two - a company specific "do not call" system, and the 9 a.m. to 9 p.m. time of day restrictions. We believe that the two mechanisms used by MBNA Marketing Systems, Inc, which are discussed below work very well. MBNA Marketing Systems, Inc. received only 130 complaints from the nearly six million consumers it called during 1991. The other proposals discussed in the Notice of Proposed Rulemaking are not practicable. We urge the Commission to adopt regulations which are consistent with the methods we use.

(i) Company Specific "Do Not Call" System

MBNA Marketing Systems, Inc. has confirmed its commitment to Customer satisfaction by the establishment of an in-house telemarketing "do not call" system. We compile a list of individuals who are opposed to telephone solicitations so they may be removed from future telemarketing campaigns. This list is updated bi-weekly. The data processing vendor who compiles and updates the "do not call" list purges these names

from all telemarketing lists prior to calling and provides MBNA with tapes of these records as backup. This internal "do not call" system helps MBNA maintain its high quality standards.

(ii) 9 a.m. to 9 p.m. Time of Day Restriction

MBNA America Bank, N.A. makes collection calls only during the hours of 8 a.m. to 9 p.m. and, as a matter of good business etiquette, MBNA Marketing Systems, Inc. makes calls only during the hours of 9 a.m. to 9 p.m. Calls made between these hours are not intrusive and most of those we call are available at home only during morning and evening hours. We urge the Commission to adopt time limitations from 8 a.m. to 9 p.m. Time limitations more restrictive than these would unnecessarily restrict our business activities.

(iii) Electronic Databases

MBNA Marketing Systems, Inc. is opposed to the use of a federally sponsored national or regional database of persons who object to receiving telephone solicitations. Because the TCPA expressly prohibits charging the consumer for participation in the database and the Commission does not believe that it is in the public interest to pass on to taxpayers the cost of a national database system, the expense of such a database would prove to be excessive to the telemarketing industry. Additionally, consumers may not be satisfied with what such a database would be able to deliver. Consumers would continue to receive all calls exempted by the TCPA (charitable institutions, booster clubs, colleges and universities, state and local governments, election campaigns and pollsters). The timeframe required for updating (and distributing the updated information) for such a large scale undertaking would prove unsatisfactory to consumers and to the telemarketing industry.

(iv) Telephone Network Technologies

MBNA Marketing Systems, Inc. is opposed to telephone network technologies that enable called parties to avoid calls from certain numbers by assigning all telemarketers to the same telephone prefix. Based on the information provided by the Commission, this type of regulation does not appear feasible because:

- (a) it is not clear whether current network technologies could support such a system;

- (b) the called party would have to be served by a central office equipped with the capability to recognize and block the special prefix; and
- (c) all telemarketers would have to be switched over into that prefix. It is not clear whether the telephone numbering plan could support such a prefix.

(v) Special Directory Markings

MBNA Marketing Systems, Inc. is opposed to any Federal regulations that would require the telemarketing industry to suppress the names of individuals who have indicated they are opposed to telemarketing by special directory markings. Retrieving those names would place undue burden upon any telemarketing company that markets nation-wide. The cost and time constraints of retrieving consumer names marked in their local telephone directory, and then ensuring that every telemarketing list is purged to remove those names before telemarketing begins, would be exorbitant.

If the Commission has questions or would like further information, please contact the undersigned, Howard Wallace, or Tom Stanton at (302) 453-9930. We would welcome the opportunity to demonstrate our telemarketing operations to the Commission through a tour of our facility in Newark, Delaware, if that would be helpful.

Very truly yours,



John R. Cochran
Vice Chairman

cc: James Smith
John Scheflen
Gregg Bacchieri