

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

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In the Matter of

MAY 26 1992

CC Docket No. 92-90

The Telephone Consumer
Protection Act of 1991

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Federal Communications Commission
Office of the Secretary

COMMENTS

MCI Telecommunications Corporation (MCI) hereby comments on the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding, which seeks to implement the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA requires the Commission to consider methods to protect the privacy of residential telephone subscribers by insulating them from the receipt of objectionable telephone solicitations. It also restricts the use of automatic telephone dialing systems, artificial voice and pre-recorded messages, and telephone facsimile machines in connection with telemarketing. Since MCI does not use such devices to telemarket, these comments will be limited to the methods proposed to protect the privacy of residential telephone subscribers.

The TCPA requires that the Commission evaluate the following alternative methods to protect residential telephone subscribers from telephone solicitations to which they object: 1) electronic databases; 2) telephone network technologies; 3) special directory markings; 4) industry-based or company-specific "do not call" systems; and 5) any other alternatives. In addition to these methods, the Commission also asks for comment on the use of

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time-of-day restrictions to achieve the TCPA's purpose.

MCI recommends company-specific do not call systems as the best method of protecting consumers' privacy interests. While some consumers do not wish to receive any unsolicited telemarketing sales calls, many do not object to such calls altogether or they object only to calls from certain companies. As noted by the Commission, unsolicited sales calls generated \$435 billion in sales in 1990. Thus, telemarketing sales are a vital part of the nation's economy and many consumers benefit from such activity. A requirement for company-specific do not call systems adequately protects consumers from unwanted telephone solicitations, but it is not so broad and overreaching so as to burden legitimate business activity.

The company-specific no call list approach satisfies the objectives of the TCPA by allowing a consumer to easily select which companies may not telemarket to him or her. A consumer thus could prevent telemarketing calls simply by notifying selected companies of his or her wish not to be telemarketed. However, the consumer then would continue to receive telemarketing calls from other companies to which the consumer does not object.

In addition, the company-specific no call list approach imposes insignificant additional burdens on business. Many companies engaged in telemarketing already use some form of a no call list and, for these companies, there should be little additional burden. Even for companies that do not already

maintain such lists, telemarketing and customer service personnel can be trained to generate and maintain the lists at comparatively little cost.^{1/}

MCI currently maintains a no call list, called a "suppression list," and believes it has been very effective in preventing unwanted solicitations. Any consumer who wishes to be on the suppression list can simply contact any MCI customer service office and request not to be telemarketed or request, at the time of a telemarketing call, not to be contacted again. That consumer's telephone number, or numbers, is then added to the suppression list, which is updated weekly by MCI. All telemarketing databases used to generate MCI telemarketing lists are checked against the suppression list to ensure that numbers on the latter are not telemarketed.^{2/} A consumer remains on the suppression list for one year, unless he or she contacts MCI and requests to be removed from the list.

MCI voluntarily created the suppression list because it did not want to contact consumers who objected to such contacts. The purpose of telemarketing, after all, is to generate sales and

^{1/} A company-specific do not call system also would eliminate the confusion and uncertainty as to what constitutes calls to any person with whom the caller has an "established business relationship," which the TCPA exempts from the term telephone solicitation. Under the company-specific do not call system, once a consumer requests not to be telemarketed it can be assumed that he or she has determined that there is no business relationship.

^{2/} MCI also incorporates the no call list of the Direct Marketing Association (DMA) into the suppression list and, therefore, consumers who appear on DMA's list are not telemarketed by MCI.

sales cannot be made to irate consumers. Accordingly, regardless of the methodology adopted by the Commission, MCI will continue to maintain its suppression list for consumers who do not wish to be telemarketed and it urges the adoption of such an approach for use by all companies that telemarket.

A company-specific no call list approach is far more effective and efficient than the alternatives suggested in the TCPA and by the Commission. Company-specific lists are superior to industry-wide lists because they increase consumer choice and are more cost effective. A consumer may not wish to be telemarketed by a specific company within an industry. With company-specific lists, the consumer could exercise this choice without foreclosing all telemarketing from other companies within that industry to which the consumer may not object.

In addition, industry-wide lists would increase the cost of developing and maintaining such lists. Company-specific lists can be generated and maintained by existing employees and groups within a company and thus require little additional expense. However, an industry-wide list would require some type of administrative organization to oversee the development and maintenance of the list and its distribution to the members of the industry. Thus, in addition to devoting employees to the process, companies also would have to support the administrative organization to oversee the operation.

Moreover, with company-specific lists the consumer can be added to the no call list relatively quickly once the company is

informed. However, with an industry-wide list, the consumer's request would have to be communicated to the administrator of the list, processed and distributed to the members before it became effective. Since new lists probably would be distributed only periodically, there could be a significant time delay before consumer requests were communicated to the companies, and there would be a further delay while the companies deleted the consumer from their telemarketing lists.

The scope of the problems associated with an industry-wide no call list would be magnified by a national or regional database. A national database also would require the establishment of an administrative organization to compile the telephone numbers of residential subscribers who do not wish to be telemarketed. However, companies still would have to maintain their internal personnel and processes to ensure that their telemarketing lists did not contain any numbers on the national database, in addition to paying for the establishment, maintenance and operation of the database and its administrator. The cost of such a database would make telemarketing prohibitively expensive for many companies, and significantly increase the cost of doing business for others. This would translate into higher prices for goods and services and reduced sales. All in all, it would turn a profitable aspect of American business into an unprofitable one.

Moreover, a national database could actually add to consumer confusion and frustration. As an initial matter, consumers would

have a false sense of "security" because a national database would not eliminate all telemarketing calls; consumers would still receive such calls from non-profit and other exempt groups. In addition, consumers change phone numbers often and, therefore, they would have to remember to add their new number to the database (and delete an old number) every time there was a change. Otherwise, a consumer not expecting telemarketing calls would receive them and a consumer not objecting to such calls would not. Moreover, a consumer could not choose to stop telemarketing from specific companies only. Rather, consumers would have to stop all telemarketing (from non-exempt companies) or allow all telemarketing.^{3/}

The other proposed options also present significant problems. With respect to a network technology solution, MCI shares the Commission's concerns that the telephone numbering plan may not be able to support a special prefix for all telemarketers. MCI also shares the Commission's concern with respect to how a requirement for special directory markings would be applied to national telemarketers. It seems likely that this approach would require the establishment by local exchange carriers of "do not call" databases, to which all telemarketers would have to subscribe. This approach, therefore, would lead to

^{3/} The Commission's strong preference against adopting an all-inclusive rule was recently demonstrated when it removed a prohibition against 800 Service "bundling" by AT&T and, instead, distinguished between "old" and "new" 800 telephone numbers in its rule. See Competition In the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991); recon. in part, 6 FCC Rcd 7569 (1991); further recon. FCC 92-181, rel. April 17, 1992.

the same problems as a national or regional database.

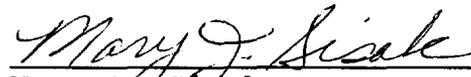
Finally, time-of-day restrictions may not be sufficient to achieve the purpose of the TCPA. Although MCI follows time-of-day restrictions to reduce any inconvenience to consumers,^{4/} that approach admittedly does not prevent unwanted telemarketing solicitations. Accordingly, this option should be used in conjunction with company-specific no call lists.

Based on the foregoing, MCI respectfully requests that the Commission adopt the proposals as stated herein.

Respectfully submitted,

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^{4/} MCI will only telemarket between the hours of 9 a.m. and 9 p.m.