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May 18th, 1992

To: The Honorable Ervin Duggan,
Commissioner,
The Federal Communications Commission,
1919 M St., N.W.,
Washington , D. C. 20554

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MAY 28 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:
Proposed Rulemaking, CC Docket No. 92-90
The Telephone Consumer Protection Act of 1991.

Dear Sir:

We appreciate the opportunity to comment on the proposed rulemaking of regulations for P. L. 102-243, The Telephone Consumer Protection Act of 1991.

Specifically, our plea is directed to Section F of Part III, pages 9 through 15, concerning Telephone Solicitation To Residential Subscribers

My wife and I invite you to call our personal home 'phone number, 513-339-7002, to learn why we no longer receive any 'problem' telephone calls.

Our telephone will not ring, so we will be unaware of your call unless you would like to speak to us personally (a most welcome occurrence); just follow the instructions..

Please read on...

After 25 hectic years in a rural General Practice of Medicine, my wife and I yearned for uninterrupted quality personal time at home, so that we might pursue our varied interests.

Such was not to be the case.

Gradually, our telephone became a conduit for unsolicited sales callers, fund raisers for alma maters, well-meaning local and national charities and foundations, pollsters, politicians and other types of telephone call intrusions. These occurred throughout the day with a greater emphasis being in the evening hours.

Angry and frustrated, we de-listed our name from the local Telephone Directory and listed our name with the Direct Marketing Association's Telephone Preference Service.

We experienced no discernible difference in the nature or frequency of these disruptions. Obviously, we were on commercial and locally aggregated "lists" of likely "positive responders"

No pre-existing relationships or implied prior consent had ever been issued in the very occasional catalog orders we had placed by telephone. In fact, we consistently stated that our 'phone number , when supplied, was to be used for internal purposes only.

Similarly, when contributing to worthwhile charities, we asked that subsequent appeals should be made by mail.

None of these measures succeeded in satisfactorily reducing the access to our private property (the telephone equipment), by any of these self-serving entities.

Determined, we began to study.

After digesting the alphabet soup of acronyms for telephone technology, the relevant aspects of the Communications Act of 1934 , the oral testimony and written submissions of witnesses before Representative Markey and Senator Hollings' sub-committees, applicable nationwide State legislative pending actions and enacted laws, rulings of public utility commissions, and a host of other resources, some cogent factors have become evident to us.

- Hard data, from studies published in unbiased, scientific, peer-review journals, is virtually non-existent, according to our research of this problem.
- 93% of Illinois Bell's telephone subscribers, polled at the time of billing, reported receiving 'problem' calls consisting of misdialed, 'hang-up' or sales/telemarketing calls.[1] This is the largest study of consumer experience we could find.
- The First Amendment to the Constitution protects "pure commercial speech" and this has consistently been upheld.[2]
- The Constitution does not address personal privacy rights.
- Federal Law does not, at present, address an established uniform national privacy policy, particularly in this area of interpersonal communications.
- An individual's right to selectively control the access to their home environment, from whatever entity, is absent only with regard to the use of the telephone.

Fortunately, an Ohio statute [3] provided us with the answer. If you are specifically instructed not to call us , by oral or written stipulation, and you then subsequently call us, it is a violation of Ohio law and is actionable.

If, as we hope, you have called our private home telephone number, you will hear how we have implemented this restriction to the unauthorized use of our home telephone equipment. To date, after 4 months of use, there has not been a single violation.

Each caller receives a clear and concise stipulation of our preferences as to the nature of acceptable telephone communication <u>before</u> our telephone rings. A single DTMF tone entry provides immediate access to our line at any time after the connection is made. Pulse tone 'phones have access as well..

The response of our personal private callers has been dramatic and universally positive.

It works because:

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[1] Product Effect Study, The Illinois Bell Business Research Council, November, 1990.

[2] Posados de Puerto Rico Assoc. v. Tourism Co., 478 U.S. 328, 340 (1986); 444 U.S. 620, 636 (1980); 452 U.S. 640, 648 (1981); and others.

[3] Ohio Revised Code, Title XXIX, Sec. 2917.21, A(5).

- Telemarketers don't want to talk to people who don't want to talk to them[4]. They just don't know who they are. To do so is inefficient and expensive for them. This applies to local, intrastate and interstate commercial callers.
- Auto dialers and predictive dialers cannot follow verbal instructions and therefore disconnect as if receiving a "no answer" response.
- Misdials and "hang-up" calls are screened effectively.
- Fund raisers and other non-commercial entities would rather seek contributions by mail, as instructed, than risk outright verbal rejection by telephone.
- The occasional call by pollsters, politicians and personal friends with a charitable request would be tolerable (although this has not happened to us yet.).

The ability to prescribe ones acceptable telephone call preferences is at the heart of the Congressional intent of Sec 2, Public Law 102-243. The balance between the First Amendment rights of speech (commercial or otherwise) and the rights to personal privacy is maintained by this approach.

The common carrier telephone companies have immediately available technology to implement the central handling of subscriber call preferences[5] Many already use custom digitized voice statements in a variety of applications.

Telephone answering machine users frequently listen to their audible tape function as a message screening device. With appropriate Federal law or FCC regulations, they could, with authority, stipulate their call preferences in advance of their message delivery. Unwanted callers would hang up and if directed would remove the name and number from the "call list" being used.

Costing less than $100, commercially available devices, such as the one installed on our telephone, are available. We can certainly attest to the success of this approach.

Within the past year circuit diagrams and construction articles for telephone call screening devices have appeared in all of the popular electronic hobbyist magazines. We are sure that entrepreneurial private enterprise companies will soon expand the market with progressively lower cost products.

Beyond Ohio, we have not investigated as to whether other states have similar call preference stipulating legislation in effect. If, as in P.L. 102-243, we can stipulate "prior consent" (to calls with pre-existing relationships) it would seem entirely reasonable and consistent to be able to stipulate "prior non-consent" (prior restraint?).

With such language in Federal law, telephone company subscriber messages, telephone answering machine messages, and accessory device messages issued to any calling entity would quickly put this problem to rest at a nationwide level, as it has done for us here in Ohio.

We strongly believe that this straightforward approach does not abrogate any First Amendment or privacy rights of anyone. Further, in these days of stated

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[4] Testimony of Richard A. Barton, Senior VP for Government Affairs, the Direct Marketing Association, before Rep. E. Markey's Subcommittee on Telecommunications and Finance, April 24th, 1991.

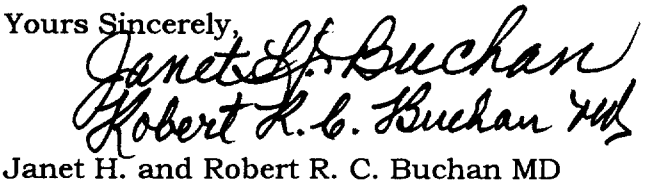
[5] Letter of Mr. Ray Kolker to Rep. E. Markey, dated April 22, 1991, page 2.

fiscal restraint, it should obviate the bureaucratic and logistical nightmare of a massive opt-out database that you are considering at the behest of Congress.

In summary Sir, please give serious consideration to adding "prior non-consent" language issueable to any calling entity either verbally or in writing by telephone service subscribers.

We thank you for this opportunity to present our comments. The favor of a reply would be greatly appreciated.

Yours Sincerely,



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Attachment.

ORC ANN. @ 2917.21 (BALDWIN) printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH THE JANUARY 1992 ISSUE OF OHIO LEGISLATIVE SERVICE ***

TITLE XXIX CRIMES-PROCEDURE

CHAPTER 2917 OFFENSES AGAINST THE PUBLIC PEACE

SUBCHAPTER HARASSMENT

ORC Ann. @ 2917.21 (BALDWIN)

@ 2917.21 Telephone harassment

(A) No person shall knowingly make or cause to be made a telephone call, or knowingly permit a telephone call to be made from a telephone under his control, to another, if the caller does any of the following:

(1) Fails to identify himself to the recipient of the telephone call and makes the telephone call with purpose to harass, abuse, or annoy any person at the premises to which the telephone call is made, whether or not conversation takes place during the telephone call;

(2) Describes, suggests, requests, or proposes that the caller, recipient of the telephone call, or any other person engage in, any sexual activity as defined in division (C) of section 2907.01 of the Revised Code, and the recipient of the telephone call, or another person at the premises to which the telephone call is made, has requested, in a previous telephone call or in the immediate telephone call, the caller not to make a telephone call to the recipient of the telephone call or to the premises to which the telephone call is made;

(3) During the telephone call, violates section 2903.21 of the Revised Code;

(4) Knowingly states to the recipient of the telephone call that he intends to cause damage to or destroy public or private property, and the recipient of the telephone call, any member of the family of the recipient of the telephone call, or any other person who resides at the premises to which the telephone call is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telephone call to the recipient of the telephone call, to another person at the premises to which the telephone call is made, or to the premises to which the telephone call is made, and the recipient of the telephone call, or another person at the premises to which the telephone call is made, has previously told the caller not to call the premises to which the telephone call is made or not to call any persons at the premises to which the telephone call is made.

(B) No person shall make or cause to be made a telephone call, or permit a telephone call to be made from a telephone under his control, with purpose to

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