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Office of the Secretary  
Federal Communication Commission  
1919 M Street, N.W. Room 222  
Washington, DC 20554

June 22 1992

Ref: Docket CC 92-90  
The Telephone Consumer  
Protection Act of 1991

Greetings,

Per my discussion with your Mr. Bill Caton, please accept the enclosed correction and amplification of my comments concerning the referenced Docket Number 92-90.

With Respect,

Robert S. Bulmash  
President, Private Citizen, Inc.

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Encl: original and five copies of corrected and amplified comments

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Federal Communications Commission  
Office of the Secretary

The Corrected and Amplified Comments  
of

Private Citizen, Inc.

Originally Submitted May 26, 1992

In a Matter presently before  
the Federal Communications Commission

CC Docket No. 92-90

Telephone Consumer Privacy Act  
of 1991

June 22, 1992

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Federal Communications Commission  
Office of the SecretaryCOMMENTS ON THE FEDERAL COMMUNICATIONS COMMISSION'S (FCC) PROPOSED  
IMPLEMENTATION OF REGULATIONS AND TENTATIVE DEFINITION OF EXEMPTIONS TO  
PROHIBITIONS OF THE TELEPHONE CONSUMER PROTECTION ACT. (TCPA or The Act).INTRODUCTION AND SUMMARY OF COMMENTS REGARDING THE ABOVE**IT STINKS !**

Due to public outcry, the TCPA was created (presumably) to protect consumers from the intrusions of telesolicitors. But its net effect will be to protect solicitors while it strips citizens of their basic right to be left alone.

In order to get Congress to pass, and President Bush to sign the TCPA, gaping loopholes (large enough to drive a "boiler-room" through) were added to it. Not satisfied with this, the FCC seems ready to take every advantage to further weaken The Act with proposals of wholesale exemptions, and avoidance of efficient, effective means by which a citizen could be protected from *junk* callers.

The carcass of this law should be buried. Effective legislation should be forged. Failing this, the FCC should eagerly help the America's majority who seek to effectively control intrusive, unwanted telesolicitations of either a sales, or non-commercial nature. Since the FCC's current TCPA proposal more closely reflects the interests of businesses (such as AT&T and Ameritech) than those promoted by citizens, it should be remembered that our's is supposed to be the best government "by the People"... not "that people can buy". [1a]

AN OVERVIEW

Private Citizen, Inc. (PCI) was formed in May 1988 to protect private citizens from unwanted fund-raising, political, survey, and business-related telephone solicitations. PCI effectuates our fundamental right to be left alone, free of such unwanted tele-intrusions, through written notifications sent on behalf of our members, to over 1000 telephone marketing related organizations. These include list compilers, telephone solicitation service agencies, firms that make such calls on their own behalf, and others. They are put on notice of our members' unwillingness to be freely disturbed by such calls, and that such calls will be received only on a *for hire* basis from such notified firms. [1] Currently, PCI has approximately 3000 subscribers nationwide.

Since 1985, PCI's president, Robert Bulmash has studied the "out-bound telesolicitation" industry; its effect on our rights, and our reaction to all incoming phone calls. Today, this Industry operates freely within a virtual legislative vacuum. Such telesolicitors (a.k.a., *junk* callers, telemarketers, phone-to-phone solicitors, *telenuisance* callers) barge into our homes at their convenience, for their own self-interest, in order to take advantage of our Pavlovian reaction to the ring of a telephone.

This *telenuisance* industry has effectively diminished our sense of sanctuary at home, an essential component of our residence, where we may retreat after a day's labor to spend time

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[1a] From 6/89 to 6/91, the following was given to each of two Illinois state senatorial campaigns.  
 from an Illinois Bell Telephone related PAC - \$10,300 to Democratic - \$10,000 to Republican  
 from an AT&T related PAC - \$ 6,500 to Democratic - \$10,000 to Republican  
 from the vast majority of citizens - \$ 0 to Democratic - \$ 0 to Republican

[1] See PCI Authorization Form

as we see fit. [2] Perhaps Dante Cirilli of Grolier Communications (a telesolicitation firm) illustrated the problem best when he said, "[The public has] been conditioned to sit up and listen when the phone rings in our home. How natural is it for us to turn the TV down, or even to move into another room to give the caller our undivided attention. And when the caller is a telemarketer, the result is a concentrated commercial message to which we have no other choice but to respond." [3] (writer's emphasis)

Before, and since Mr. Cirilli's insight, we have abhorred live unsolicited sales calls:

- 68% very annoyed - The Roper Organization Am. Demographic Mag. 3/91
- 83% preferred not to be called - Public Pulse / Roper Inc. Mag. 1/89
- 78% find it unacceptable - Ebasco Consult. commissioned by Washington State Utility Comm. 1985
- 86% consider it annoying - Field Re'srch. commissioned by Pacific Telephone & Telegraph 1978
- 66% hang-up on, or cut off the pitchmen.- Public Pulse / Roper Inc. Mag. 1/89
- 70% see it as an invasion of privacy - Walker Research Telemarketing Mag. 3/91
- 69% consider such calls an offensive way to sell - Walker Research Telemarketing Mag. 3/91

The vast majority of Americans are fed up with this intrusive industry's concentrated messages to which we have no other choice but to respond! How has the American family come to deserve such insult?

PCI's efforts are driven by fundamental, therefore Constitutionally recognized (though unenumerated) right to be left alone; a right that Supreme Court Justice Louis Brandeis referred to as "*the most comprehensive of rights, and the one most valued by civilized man.*" [4] Furthermore, the U.S. Constitution's Preamble tells us that, "*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure Domestic Tranquility...*" created our system of government.

If our right to enjoy peace and quiet is to exist at all, it must at least exist in our domicile, our home. To effectuate that right, we may notify a telesoliciting entity of our unwillingness to be disturbed. And once notified, they have a duty to respect our request to be left alone. To do otherwise would be to violate a fundamental right, the spirit of the 9th Amendment [5], as well as the right to peacefully enjoy our own property.

Unwanted door-to-door, and phone-to-phone solicitation are strikingly similar. Both summon us while disguised as the familiar ring or knock of a family or friend. Both are intrusive strangers who know more about us than we of them. Both pull us from our private, family activity at home. Both demand a physical act in response to their summons. Both are personally upon us, and at their convenience. Both present themselves in "real-time", thus forcing us to deal with them. Both may defraud us, and disappear without a trace. Both know beforehand, that their act will likely serve only to disturb us. Both can do all this without gaining physical entrance to the home...

The phone-to-phone soliciting industry is spreading, with growth estimates ranging from 30

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[2] "Our decision reflects... the right... to be let alone in the privacy of the home. Sometimes the last citadel of the tired, the weary and the sick." Carey v Brown 447 US 455, 471 (1980)

[3] The Washington Monthly, December 1986 - Article titled "Dialing for Dollars".

In Telemarketing Magazine of April 1991, "Grolier" was listed as one of the largest U.S. telesolicitors

[4] Harvard Law Review, 1890

[5] Constitution of the United States Ninth Amendment "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

to 50% annually, while door-to-door soliciting fades into a memory. To date, our legal system has recognized only a means to effectively ward off the later. And our power in this regard is absolute, based solely on our discretion, not the nature of the solicitation. Now our government seems ready to formulate rules, based not on the protection we need, but instead on the minimum protection that can be given.

In Martin v. Struthers 63 S.Ct 982, the court stated, "*For centuries, it has been a common practice... for persons not specifically invited to go from home to home and ring doorbells... Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household...*" While in Pennsylvania Public Interest Coalition v. York Township 569 F.Supp. 1398 (1983) the court held, "*A city can punish those who call at a home in defiance of the previously expressed will of the occupant.*", and "*The township has the means at its disposal to protect those individual residents who indicate they do not wish to be disturbed.*"

As a proper base from which to regulate, Congress and the FCC should view phone-to-phone solicitation as the more intrusive electronic counterpart of door-to-door solicitations, with the added power to gain immediate electronic entrance to a home at the push of a button thousands of miles away. Sadly, the NO SOLICITATION sign our government is readying for us, will probably read more like OPEN HOUSE to the myriad of *junk* callers excluded from The Act.

The Telephone Consumer Privacy Act (TCPA) is supposed to help protect our right to be left alone, free from the intrusions of those we are unwilling to hear from. However, in light of the rainbow of exemptions allowed by the TCPA, and those tentatively proposed by the FCC, The Act seems to be shaping up as the antithesis of citizen protection. Private Citizen's fear is that once the FCC fulfills its seeming intention to bleed this already very weak legislation, the TCPA will be seen by the *telenuisance* industry as a license to disturb us. Worse yet, courts may wrongly view any civil action brought against unwanted tele-intruders as meritless unless brought pursuant to the TCPA (in the absence of "telephone solicitation" legislation on a state level).

Thus the TCPA, which was touted as a *citizen's privacy protector*, may actually become a *junk caller's legislative crowbar* for entering any home, while holding it up to shield themselves from repercussions which would otherwise result from their wrongful intrusions. Indeed, leaders of the Telephone Solicitation Industry are already talking about how the TCPA will legitimize the Industry [6].

Even if the TCPA is implemented in its most formidable version, with live calls included;

- † It will still let every *telenuisance* firm call every citizen annually without consequences,
  - Their are "*hundreds of thousands of local businesses that account for most of the calls...*" [7]. Thus it is reasonable to assume the majority of residences are each within the "telesolicitation firing range" of thousands of such firms.
- † If a *junker* repeatedly televiolates the law, and is sued as a result, the TCPA allows the intruder an "**affirmative defense**".
  - Essentially, under the TCPA, all the *junker* has to say in court is, "Your Honor, we tried not to call him!" Since *telenuisance* firms are commonly megalithic-like enterprises with financial and legal assets far beyond an average citizen's, once such a firm testifies it was a mistake, the televictim will have to prove otherwise.

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[6] TeleProfessional Magazine, March 1992: **Legislation Aimed at Telemarketing Has Positive Twist**, "*Legislation will have a legitimizing effect for telemarketing.*" Steve Idelman, Chrmn, ITI Mrktg. Svcs.

[7] DM News Richard Barton's May 27, 1991 column, **Inside the Beltway, Why the No-Call Bill Is Dangerous**

- Many telesoliciting firms have *telemarketing* software which enables "No Call" requests to be effectuated. Yet employees of such firms commonly report that people logged as a "No Call", continue to be called. Such request are indicated on predictive dialer terminal display screens. This seeming anomalous behavior (overriding "No Call" requests) can be understood in light of the Industry's willful nature of calling those who don't want to be called. (To do otherwise would only result in ever-more people wanting to take advantage of what would be an effective and easy means to to stop the teleintrusions, and lead eventually to a crippling of the industry for lack of available targets.)

Unless the plaintiff and judge know of this common practice to override "No Call" software, a judge will most likely, and wrongly see the existence of the software itself as evidence of the caller's intent to heed a "No Call" request.

- † The citizen may also file a complaint with the FCC based on violations of 47 USC § 227.
- **RUBBISH!** Unless complaints are against phone companies, the FCC will effectively do less than nothing about them. In practice, when the FCC was presented with allegations of the violation of a Communications Act criminal statute (47 USC § 223, [\$50,000 / 6 month penalty]), involving the WATS line of a Wall Street based investment firm, the FCC wasted 8+ months, and untold tax dollars to tell this writer that it was not the proper entity to enforce the law against *non-phone company* violators. The FCC could have said that within 8 minutes of my complaint's receipt... not 8 months. The result was an absolute, total waste of time and energy for all involved... and your taxes.

As it is with any powerful industry lobby, those that profit from telephone solicitations try to minimize the implementation of effective government regulation. In that regard, the Direct Marketing Association (DMA) tells lawmakers that its *self-regulatory policy* benefits the public. The DMA has even created a No Junk list they obliquely term the *Telephone Preference Service* ([TPS]). The DMA tells law-makers, citizens, and the media that those who are unwilling to be *junked* can put themselves on the TPS, which is "made available" (read "sold") to the Industry. At the same time, the DMA tells everyone that *junk* callers do not want to call anyone unwilling to be called... as such calls would not be productive.

On the surface this seems to make perfect sense. But what the DMA fails to effectively address is that the vast majority of phone sales solicitations are made to people who prefer not to be bothered with such calls. The *junk* call industry's first priority is finding a compliant *callee*. Since the odds of failure are so great for any one call attempt, they try to insure success by increasing the number of calls. This strategy results in a citizen's right of privacy suffer an outrageous increase of insult. At the same time, they often views a family as *just another number*, something they can handle wastefully as they please. [8] And why should the Industry do otherwise, when the injured are given no recourse by government?

Their is no other societal circumstance which tolerates an unauthorized "real-time" entry into another's home based solely on the intruder's right of "free speech", or commerce. The fact that our home's front door faces the public way, does not constitute an invitation for others to enter in the exercise of their rights. Nor does our open window authorize others outside to gawk at the private activity within. Likewise, our residential telephone's

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[8] Encyclopedia of Telemarketing edited by Bencin & Jonovic, Published by Prentice Hall, **Handling Rejection**  
"Humans are just not conditioned... to continually withstand the perceived head-bashing that is associated with the inevitable 'no's' telesales reps hear, day in, day out." "Yet those who continue to prosper in telephone selling have found ways to insulate themselves from the seeming endless barrage of 'no's'". "Accept the fact that you will get 'no's'. Many of them. And then more." "**Don't be afraid to waste a few calls. So what if you got a 'no'? You have an effectively infinite number of calls available to you.**" (this writer's emphasis - their writer's candor)

connection to the public network, does not constitute authorization for others to enter our home, and demand our physical involvement for their own self-interest, when they know (or should know), society's general displeasure with such behavior.

Indeed, in the world of telephone solicitations, where most are unwilling to be called, the only socially responsible method for the conduct of their business would be to solicit only those who have given their *prior affirmative consent* to that soliciting entity: a concept rejected out of hand by the Industry. [9]

Tellingly, in the face of clear evidence of our annoyance (and its own TPS list of 400,000+ citizens), last year the DMA's Senior Vice President of Governmental Affairs, and registered lobbyist, Richard Barton told Congress that the DMA has, "*no empirical data demonstrating that American consumers are generally opposed to current 'live operator' telemarketing practices...*". Yet, this same DMA lobbyist seemed to recognize how the public could be opposed to such practices 10 weeks later, when he was quoted in a trade publication insisting that, "*...telemarketers must continually remind themselves that theirs is the most obtrusive of advertising media.*"[10]

While the public clamors against phone-to-phone soliciting, the Direct Marketing Association's members allow the DMA to puff itself as the "the foremost advocate of direct marketers". Many major U.S. firms now filing TCPA comments are DMA members. To gain insight into the comments by these Industry / DMA members, let's examine how they view some of the basic problems collateral to the Industry's operation.

- ♦ In responding to the need for a national No Call database;
  - The DMA tells the FCC, "*a regulatory approach based upon third party administration of [such a] 'do not call' database simply will not work*". Yet when the DMA touts its own national *Do Not Call* database to the public, the TPS (infra), we hear how effective it is. Perhaps the FCC can determine why the DMA seems to have two different opinions about a national 'No Call List'... depending on who its trying to persuade.
- ♦ Recently, Mr. Barton, the DMA lobbyist, chaired a *telemarketing* convention's, legislative panel discussion, at which the FCC Chairman's Chief of Staff delivered the Legislative Keynote on the TCPA. The convention, panel, and conference were sponsored by Telemarketing Magazine. When the panel was asked to relate the Industry's anthem, "*we don't want to call those who don't want to be called*", to the Industry's behavior of calling a population that (surveys consistently find) generally don't want to be telesolicited at home, Mr. Barton responded as follows;
  - 1) **The Industry doesn't have statistical evidence that most don't want telesolicitation.**
    - Yet the statistical evidence above is available to anyone... whose concerned.
  - 2) **Surveys can be "torqued" in almost any way [to gain the statistical data desired].**
    - Yet two of the surveys mentioned above were generated by one of the industry's own, a telesoliciting firms, and published in Telemarketing Magazine, the conference's sponsor. This becomes more *peculiar* in light of Telemarketing Magazine's common, prominent reference, that it is regarded as the "Bible" of the industry, and considered "The only credible source of information in the industry." (What about being *torqued*?)
  - 3) **Telemarketing generated \$400 billion. Thus he doubts only a minority was involved.**
    - Yet the annual dollar figure cited by this Industry lobbyist is one that is inflated 25

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[9] DM News May 18, 1992, **AmEx Hit on Data Usage; NY Sets Privacy Hearing**; quote of Jonah Gitlitz, DMA president - "*Perhaps the most draconian legislative threat that could severely impact the direct marketing business, as we know it now, is the increased threat of positive consent - that consumers should not receive solicitations unless they specifically request them.*"

[10] DM News - Sept. 30, 1991 Richard Barton's column, **Inside the Beltway; Tone it Down, Telemarketers**

times (see infra re: *paragraph 24*). In fact, on average an very small percentage of those telesolicited actually comply. Mr. Barton may now cast his doubts aside!

**4) Most shoppers don't want sales clerks approaching them in stores either.**

- This one takes the cake! Aside from an implied abandonment of the mendacious argument that "most folks don't mind *junk* calls", the Industry's Mr. Barton indicates that our right to be left alone at home is somehow comparable to our right to be left at a used car dealership, clothing boutique, od the like. Perhaps, in its frenzy to generate revenue, the telesoliciting industry has lost its sense of what a home is.

It would do well for the Industry clearly realize that the ancient concept of our home as our castle is still alive today. Phone-to-phone solicitors should not even begin to fantasize our home as their convenience store.

Their novel view of the world, and peculiar response to those who question it, seems to characterize a blindly defensive posture. Sadly, the success of this defense strategy speaks as much about our government, as it does about their intrusive industry.

The Industry (through lobbying entities like the DMA) has successfully thwarted government regulation. It has virtually cut the legs from under most state legislation that it couldn't stop. And it is now evidently doing the same federally. Their argument, "*We don't want to call those who don't want to be called*", has worked so well, that now when a telephone soliciting firm continues to bother a person who has repeatedly told that firm to stop, the solicitor will bark, "We will abide by the law... and only the law", leaving the televictim with no perceived recourse.

The TCPA, if effectuated with the proposed exemptions our homes will surely become their retail outlets. Indeed, the very best aspect of the TCPA is that would allows the FCC to ask Congress for the sweeping powers necessary to actually protect private citizens from the telenuisance industry. An action that is deserving, but not foreseen from the Federal Communications Commission under President Bush's leadership.

ADRMP's (AutoDialing, Recorded Message Playing device)

**AUTODIALERS** - The proposed TCPA bans AutoDialers from calling "911", hospital, police, and fire emergency numbers, as well as physician and poison control offices. For the purposes of this aspect of the TCPA, it should also ban calls to the homes of medical professionals who are "on emergency call". The proposed TCPA bans AutoDialers from calling the "rooms" of a hotel, hospital, health and elderly care home. For the purposes of this aspect of the TCPA, it should also ban calls to the private homes of elderly citizens.

Generally, the argument for allowing use of ADRMP's for non-commercial or fund-raising activity can be favorably compared to allowing assault weapons in the name of hunting. Use should be strictly regulated, with stiff penalties. All types of solicitations should be included in the TCPA, without exception.

It seems absurd that autodialers would be banned from calling hotel rooms, but not homes. The very nature of the legislation at this point is to protect the property rights of commercial concerns, and the privacy rights of those who pay an innkeeper. Yet nowhere else in the TCPA is this absolute blanket of protection given to citizens in their homes. (On the topic of hotels, at least one Hilton Hotel is soliciting collateral business by "live telesoliciting". In doing so, Hilton managed to repeat such calls to this writer, after my vigorous instruction to Hilton's pitchmen to stop. [If it happened here, it evidently must happen elsewhere.]

Presently, when predictive dialers are commonly used to autodial numbers in advance of staff availability to chat with the called party, the predictive dialer may now play a, "Please

hold for an important message" announcement to encourage called parties to wait for the next available *telesolicitor* to come on line. The provisions of the TCPA will not result in less annoyance, but rather just increase the number of citizens being hung-up on due to the calling firm's lack of available pitching staff. The industry term for this is "abandonment". One Industry leader recently said the industry considers it responsible to "abandon" up to 3% of all predictively dialed calls. The TCPA prevents the "Please hold" messages from being used, but does nothing to prohibit these (if I may) JERKS from calling us, only to hang up on us... because they are too busy. By the way... the Industry leader that mentioned the 3% figure is the operations manager of a firm that makes 5,000,000 *junk* calls a month. If his firm does what he says the Industry thinks is responsible, his firm may be hanging-up up on more than 6,000 a day.

I urge the prohibition AUTODIALER calls as described in the TCPA, to homes.

#### ADRMP's TO BUSINESSES

Small businesses may commonly get 10 phone solicitations a day. From bakers to book sellers, a businessman must stop profit making activity to answer a solicitor's summons, as he can't afford to miss the call of a potential customer. As a result, the added *telenuisance* cost of doing business are the innumerable, useless interruptions of productive time. Once a business asks a telesoliciting entity to stop intruding, the solicitor should stop. Simple as that! And that's what the law should enable.

I strongly urge the FCC to prohibit ADRMP calls to all businesses.

#### COMMENTS ON THE TELEPHONE SALES PHILOSOPHY OF THE INVESTMENT INDUSTRY

The one industry singled out in the text of the FCC's NOTICE OF PROPOSED RULEMAKING, is the "stockbroker[age]" industry. In that regard, it mentions 75,000 brokers making 1.5 billion calls per year. Possibly, this aspect of *junk* calling is the largest contributor to the nation's telenuisance problem. As such, it is appropriate to point out specific incidents indicating this industry's view of a telephone subscriber's rights.

MERRILL LYNCH - In Massachusetts, after an attorney was repeatedly telesolicited by this firm's representatives he asked that Merrill Lynch stop bothering him in his office. [11]

When the calls continued, the attorney put his request in writing.

When the calls continued, the attorney threatened legal action.

When the calls continued, he asked for, and got a court order enjoining Merrill Lynch to stop.

Merrill Lynch appealed the ruling, claiming (in part) that:

Merrill Lynch "... has no practical ability to ensure that any person will not be called..."

the attorney "... does not have to take any calls at his office, unless he chooses to do so."

(I am compelled to note my view of their argument here; that since they cannot effectively control who they solicit, citizens bear some responsibility for these intrusions by answering the phone.)

Remarkably, the State's Supreme Court took the appeal prior to its Appellate Court hearing, and found that the words of the state law on which the attorney based his original action, did not accurately reflect the state's intent. The court rejected the interpretation of the word "or" in the law's phrase requiring that the calls be an "unreasonable, substantial or serious interference", and ruled that the word "or" was used to really mean "and". Therefore, since the Merrill Lynch calls were not also serious and/or substantial, the standard was not met, and the injunction was overturned.

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[11] Commonwealth of Massachusetts Appeals Court - No. 89-P-1117 Middlesex County

DEAN WITTER - According to a marketing trade publication [12], regarding this firm's broker sales training practices, they test telemarketers in the following way; *"Bring them in on Saturday at 8 AM. Make them do 50 calls before lunch. For those who complete the calls calls, tell them 'we do it again on Sunday morning.' Those who show no hesitation get the job."*

PAINWEBBER - Their Senior VP and General Counsel (in response to issues raised due to the repeated solicitation of a person who tried to get them to stop) told this writer; *"At this time, however, there are only a few jurisdictions with current prohibitions against the use of telephone lines for legitimate purposes. To my knowledge [the subject televictim] does not reside in such a jurisdiction."* After requesting that further correspondence from Private Citizen be directed to him, this gentle man and General Counsel went on to issue the following statement, *"... some organizations may feel it incumbent upon themselves to charge you for their time. Please bear that in mind."* A copy of this remarkable letter is enclosed for review. It illuminates a screaming need for effective regulation of what seems to be a common telesoliciting philosophy in The Investment Industry. *When PaineWebber talks, people must listen...* until we get them off our phones. I strongly urge the FCC to remedy this situation.

It is fitting for others to *bear in mind* that a bully (even a subtle one) does his best work in a schoolyard... against children!

Generally, a growing *investment* industry practice is to hire "pre-callers", whose job is to dial phone numbers to get us on the line. Once on-line, they try to transfer those who don't hang up, and who may have an interest, to licensed stockbrokers for pitching. In this way stockbrokers don't have to waste their valuable time while wasting ours. Pre-callers to do it for them.

Commonly, an investment industry telesolicitor will make 300 calls a day. The result will be 280 will not allow the caller to complete the pitch (by hanging-up or vigorously describing their displeasure). Of the 20 others, one will become a "client".

The above items provide only a glimpse of one corner of the telephone solicitation industry. We the People, need effective help in protecting ourselves from an industry driven by attitudes such as these! The FCC's anticipated neglect to include TCPA protection for businesses that have asked specific *live* soliciting firms to stop tele-annoying them, will **help to accelerate the frenzied sales practices of an industry whose leaders admit to its being out of control.**

#### GENERAL EXEMPTIONS PROPOSED FOR CALLS TO RESIDENCES

By excluding non-commercial solicitation, the TCPA regulates the content of speech. This may well be the TCPA's fatal flaw. The TCPA declares, *"The Congress finds that: (#8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations."* Indeed, the Constitution does not prohibit restrictions on any specific type of solicitation by telephone, while it commonly does prohibit restriction of speech based on its content. However, the Constitution does allow: Time, Place, and Manner restrictions on speech. *Grayned v. Rockford*, 408 U.S. 104 (1972). Certainly, a solicitor has ample alternatives to the use of our telephone, to interrupt our meals, wake us from our sleep, or drag us from our bathroom, in the exercise of his free speech.

**IT IS PROPOSED THAT ADRMP's WILL BE ALLOWED TO SOLICIT RESIDENTS FOR:**

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[12] INBOUND OUTBOUND MAGAZINE, July 1989, **Patches & Fixes**

### Non-commercial purposes -

Such as tax-exempt organizations like those of Police and Fireman's Benevolent Assn., whose incessant solicitors commonly turn over less than 15% of the gross collected, to some union fund that is the actual beneficiary of the fund-raising drive.

### Former and/or existing customers -

The FCC should clarify if a citizen's "call for product information" to an 800 number, would qualify as an existing relationship, when the caller refuses to knowingly release his phone number. (Note that callers to 800 lines commonly have their originating [home] numbers supplied to the called party.)

Notable here, AT&T staff has described to this writer, its criteria for judging if an entity is an AT&T customer; saying that such criteria includes those who accepted collect calls from AT&T.

The FCC should insist on a caller's duty to respect the rights of residents who ask to be left alone. Regardless of that person's status as a former or existing customer of the firm told to stop calling. Such soliciting firms can ask new customers for authorization to make future telesolicitations.

### Debt collection

Although the FCC mentions that a predictive dialer "immediately delivers answered calls" to a telephone rep, I am commonly told by manufacturer's sales staff of such equipment that it is often seen as appropriate to set the speed of the predictive dialer so high that it will "abandon" (hang up) on 30% of the debtors called, for lack of a representative to talk to those answering. Although this may seem unreasonable, perhaps this is but another means of applying pressure to those unable or unwilling to pay bills in a timely manner.

In the case of debt collection, callers can easily get prior authorization to use an ADRMP at the time credit is extended.

### Emergency purposes

This is interpreted to include health or safety information even if not of an emergency nature. As a result, phone scams that commonly use ADRMP's to pitch vitamin & water softeners will be allowed to continue. These scams first tell you of an "award" coming to the called party, if they purchase. Today, this is popular telefraud scam which preys predominantly on older citizens. I suggest that FCC take this opportunity to act to protect older citizens in this regard.

I strongly urge that (if all ADRMP's are not banned, as they should be), all ADRMP's users be required to have prior affirmative, fully informed authorization of the called parties.

### ADRMP TECHNICAL STANDARDS

The FCC asks for comment on the following rules:

The name of the calling entity is to be stated at the beginning of the message.

Whose name?...

the principal or the soliciting agency that may have made the call under contract?

Televictims will likely not recognize the name of any firm that would use an ADRMP in any case.

The address or phone number of the caller can be given at the end of the solicitation.

This requires the resident to listen to the entire pitch in order to get enough information to complain.

I urge that name, phone number and address be given within the first 10 seconds of the solicitation. The phone number shall not be the ADRMP's, and shall be answered during ADRMP operation. The identifying information shall be given at a rate allowing it to be easily hand written as given.

The ADRMP shall release the line within 5 seconds of receiving "notification" of a hang up.

Note that some local telephone companies take 25 seconds to transmit that signal. [13]  
A dead line for 30 seconds, due to an ADRMP can result in a dead person forever.  
I urge that ADRMP's be required to "immediately release" the line.  
- if not, then ADRMP's should not be allowed on that local exchange switch!  
- that is, unless the law is meant to protect ADRMPs instead of people.

Generally, these rules seem to miss the point: **Most of us don't want junk phone callers to disturb us.** Instead of taking this opportunity to protect us, the FCC proposes to incorporate rules to:

Require ADRMP users to give their name - a minimal requirement at best.

Allow ADRMP users to force victims to listen to an entire pitch before giving their address.

Allow ADRMP's to tie up our telephone lines for up to 30 seconds AFTER WE HANG UP.

The FCC's proposals actually to protect the *junk* call industry, rather than its victims.

Whether telephone solicitations are made; to home or business, by machine or personally, to generate sales, or donations, or data, the FCC should make it clear that its rulemaking (or lack thereof) is not to be construed as a license to abuse the rights of others via the nation's telephone network. I strongly suggest that the FCC express its sense that an entity, once told to stop soliciting another firm or person, is unquestionably under a duty to stop making such calls.

#### TELEPHONE SOLICITATION TO RESIDENTIAL SUBSCRIBERS

The FCC's rulemaking procedure concerns the need to protect privacy rights, and avoid getting *junk* calls. While President Bush indicated his wish that the FCC implement the TCPA in a pro-business fashion, saying;

*"... I fully expect that the [FCC] will... ensure that the requirements of the [TCPA] will be met with the least possible cost to the economy."*

Thus the FCC's primary Presidential directive is to protect business. Though the TCPA was created to protect our right of privacy from *junk* call intrusions, the President seems to see the TCPA as a problem that citizen's created for business.

The FCC may either help unwilling victims of, *"the most obtrusive of advertising media"* (see Barton, cited above), or limit the protection of these victims by implementing the wholesale exemptions proposed.

This writer often hears from residential telephone subscribers who describe repeated solicitations from specific firms after the resident's request that they stop. Commonly, these callers are so brazen as to inform the televictims that their is **NOTHING** (short of removing their phone, or not answering it) that will stop the tele-intruders from calling.

At the same time, these callers know their next solicitation will likely result only in disturbing the person called. If our right to be left alone at home still exists, we need protection from these intruders. Beyond their disturbances, and blatant disregard for our rights (when they insist on their "right" to continue to bother us), note that most citizens consider even *proper telephone solicitation calls*, as an outright annoyance.

And by the way; repeat calls are not necessarily the specialty of "boiler-rooms". Indeed such boiler-room operations are often scams, and as such are short lived. Repeat *telemarketing* calls commonly involve the "board-rooms" of America's largest, and most respected firms.

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[13] see FCC document # 63203: ICB-FS-UNSOL-1 April 1990 UNSOLICITED CALLS

Examples of the above include:

**CitiBank** - has insisted on a policy of continuing to solicit citizens for up to six months after being asked to cease, and to effectively block the attempt of those who would try to stop these calls independently. In at least one incident they also refused to identify the firms they hired to carry out these tele-intrusions. To wit: Here CitiBank gave a list of phone numbers that appeared on their credit-card applications. One of these was a "wrong number" which happened to be mine. As a result, I began getting *junk* called from a variety of firms asking for a person that did not live at my residence. When I asked CitiBank to correct this, they told me it may take up to six months for the solicitations to stop. As I did not feel I was getting appropriate co-operation, I asked CitiBank to identify the firms they gave my "wrong number" to, so I could personally contact them with instructions not to bother me. CitiBank refused this request saying, **since I was not a CitiBank Card Holder, they had no duty to tell me who they gave my phone number to.**

**Encyclopedia Britannica's** Britcom (telemarketing) division has insisted it will telesolicit any person that its principal / client hires it to call. This will be the case, even in defiance of a citizen's previously expressed request that Britcom not call again. The rationale Britcom gave me for this behavior, was that they work for the firms that hire them, not for the citizens they call. Therefore, we have no right to tell them what to do.

**Ameritech**, and its local exchange carrier Illinois Bell Telephone, continues to multi-telesolicit residents that have repeatedly asked these firms, both orally and in writing, to not bother them with their *junk* calls. In more than one case, when Ameritech's televictim asked what other telesoliciting firms Ameritech hired, so the televictim could contact such firms directly to advise them not to *junk* call them, Ameritech refused. Thus these residents were forced to remain defenseless against firms that Ameritech / Illinois Bell kept hidden, until such time when they barged into our homes. Only after the firm tele-annoys a resident, will Ameritech / Illinois Bell acknowledge the identity of that particular contract tele-intruder, to the resident intruded upon. The net effect... Ameritech / Illinois Bell will act as a barrier to those who wish to protect themselves from Ameritech / Illinois Bell *junk* calls. **We need effective protection from "reputables" like Ameritech.** (Note that in the case described above, Ameritech / Illinois Bell was soliciting those with whom they had a business relationship.)

**MCI** once telesolicited an elderly woman the afternoon she returned from the hospital being diagnosed as having a malignancy. When the woman said "no" and hung up, the MCI solicitor quickly called back asking for the woman's husband (she had never been married). The solicitor readily admitted her earlier call, but insisted that she called back to 'talk to someone who could understand common sense'.

As horrific as this situation was, it became all the more so when this matter was brought to the attention of MCI's Washington Headquarters. The resulting investigation by MCI found that the MCI solicitor 'inadvertently marked the woman's card as a "busy", thus generating a second call'. As a result of this conclusion MCI was barred from having to deal with actual circumstance of the incident. In my view, as awful as the circumstance surrounding this particular tele-intrusion was, the worst aspect came with the result of MCI's investigation of it.

In October of 1990, it was reported to a Congressional Subcommittee; *Fraudulent Customer Acquisition Practices in the Long Distance Telephone Industry*, that MCI may place as many as 7 million phone solicitations a month. Since that time, trade magazines indicate that MCI's own available capacity to make such

calls has grown by approximately 50%. [14]

AT&T reportedly makes over 5 million telephone solicitations monthly. [15] Time and again I hear from folks about such AT&T calls. This month a Georgia resident described four such calls she received during the past year. Each time she told the caller she was unwilling to be disturbed again, and each time her request was met by the caller hanging up on her. When she and I called AT&T customer service, she learned that AT&T policy requires residents to call "customer service" if they are to get AT&T to stop barging into their homes. Since the solicitors' who called the Georgia resident had the training and supervision which allowed them to consistently hang up on her, rather than inform her of AT&T's policy and phone number to call, she was unaware of either. I see AT&T's policy as obstructive to privacy. To view this AT&T policy as indicative of a responsible industry, will force citizens to find the proper phone number of every firm that *junk* calls them in order to call them back, to tell them not to call.

Olan Mills' Chairman submitted his written statement for inclusion in the hearing record of the US Senate's Subcommittee on Communications last July which was looking into regulation of *telemarketing* industry. His closing remarks included, "We think the FCC should have some other options besides the national electronic data list. The option that we favor is the 'Do Not Call System' that we use now." In describing this *Do Not Call System* to Congress, Olan Mills wrote, "When someone indicates clearly that they do not want to be called again, we put their number on a list and don't call them again for 2 years."

Olan Mills has a peculiar sense of its right to barge into my home. When I say "Don't Ever Bother Me Again!", Olan effectively hears, "Call me again in a couple years!" A plea for privacy is met by Olan with some patience, and then more calls. Tellingly, Olan sees this policy as so responsible that it crows about it to Congress. To me, Olan's policy seems both socially absurd, and indicative of the business philosophy necessary to support an obtrusive sales process that effectively treats our right to be left alone in our own homes, free of annoying intrusions, as but a quaint historical anomaly. It should be noted here that the TCPA will enable Olan to double its existing "Do Not Call" callback rate without legal burden.

All their assurances aside, this writer was solicited 3 times within a six month period by Olan Mills, Inc., twice after I told them to stop. Indeed, of all the firms complaints received here, regarding repeat calls after requests to stop... Olan Mills, Inc. is easily among the "Top Ten".

The FCC should require that once:

- a telesolicitor is told not to call a citizen, the firm is considered to have been put on notice,
- a firm, once *notified* not to disturb a citizen, it may not do so even once without burden,
- a citizen or business (or agent of either) may effectively give such notice prior to any telesolicitations from the notified firm.

In 1980, the FCC found regulation was not warranted. Now the FCC asks if additional authority is needed to protect consumers, The answer is YES, for:

Prior relationships, when a potential *callee* indicates unwillingness to be called.

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[14] see: HEARING before the Government Information, Justice, and Agriculture Subcommittee of the (US House of Representatives) Committee on Government Operations. October 17, 1990, page 184  
see: Telemarketing Magazine April 1991, Top 50 Service Agencies... Page 43; #1 is Pioneer Teletechnologies, a firm doing +50% of its business with MCI, with a total of 4,698 "Outbound lines"  
see: Telemarketing Magazine May 1992, Top 50 Service Agencies... page 51, #1 is MCI Services Marketing (name changed from Pioneer Teletechnologies). Total "Outbound lines" = 6,694

[15] see: HEARING before the Government Information, Justice, and Agriculture Subcommittee of the (US House of Representatives) Committee on Government Operations. October 17, 1990, page 185

Non-profit/tax exempt, when a potential *callee* indicates unwillingness to be called.  
Survey-research, when a potential *callee* indicates unwillingness to be called.  
Political, when a potential *callee* indicates unwillingness to be called.

THE OPPORTUNITY TO NOT BE *JUNK* CALLED MUST EXIST PRIOR TO A POTENTIAL TELE-SOLICITOR'S FIRST ATTEMPT TO SUMMON TO OUR PHONE. The FCC is body of the People of the United States. The People now need the FCC's help.

It is well recognized that solicitors have a duty to respect "No Solicitation" signs on doors.  
Martin v. Struthers 63 S.Ct. 682 - "...homes are sanctuaries from intrusions upon privacy, and of opportunities for leading lives of health and safety. Door-knocking and bell-ringing by professed peddlers of things or ideas may therefore be... circumscribed so as not to sanctify the rights of these peddlers in disregard of the rights of those within doors."  
Carey v. Brown 447 US 471 - "The state's interest in protecting the well being, tranquility & privacy of the home is of the highest order in a civilized society." "Our decision reflects the right to be let alone in the privacy of the home. Sometimes the last citadel of the tired, the weary and the sick."  
Rowan v. US Post Office 397 US 728 - "A mailer's right to communicate must stop at the mailbox of an unreceptive addressee. To hold less would be to license a form of trespass." "That we are often captives outside the home to objectionable speech doesn't mean we must be captives everywhere."

Reasonable time, place, and manner restrictions may be placed on otherwise free speech.  
See: In the Matter of Unsolicited Telephone Calls (FCC Docket No. 78-100)  
Memorandum Opinion and Order of the FCC, 5/22/80, Page 16, Par. 35  
See: Grayned v. Rockford, 408 U.S. 104  
Therefore, telesoliciting restrictions may consist of: Any time, To a residence, By telephone. This would still the myriad of alternative forms of speech to be utilized.

The FCC asks if it should address the inherent difference between ADRMP, and live calls. At the center of the entire matter is **our right to be left alone** - not to be unwillingly called from our activity to respond to another's unwanted summons. The harm is the loss of privacy, to those who know, or should know not to bother us. Whether calls are from people who dial phones, or program phone dialers, IT IS THE SAME RESULT!

Relating to paragraph #24 - NOTICE OF PROPOSED RULEMAKING, the FCC states:

- 1) "...unsolicited sales calls generated \$435,000,000,000 in sales in 1990".
- 2) "Thus many consumers find such contacts beneficial..."
- 3) "The [FCC] tentatively concludes that it is not in the public interest to eliminate this option for consumers."  
- - - My comment on these particular FCC insights are as follows: - - -
  - 1) The FCC wrongly relates the \$435 billion to consumer telephone sales solicitations. The FCC cites the TCPA as the figure's source -  
The TCPA, refers to 'total telemarketing sales'.  
- Total telemarketing sales includes: industrial and commercial telemarketing sales, as well as calls *made by citizen-consumers*, to order merchandise.  
The \$435 billion is not historical fact (as indicated), but rather a 1985 prediction.  
- The figure appeared in 1985 as a prediction of Industry growth by 1990. [16]

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[16] A \$435 billion figure has been used through-out the TCPA legislative process. This figure's source has been attributed alternatively to a 1985 prediction of Technology Marketing Corp. (as reported in The Encyclopedia of Telemarketing), or the 1985 prediction of a consortium of the Direct Marketing Assoc., the U.S. Bureau of Economic Analysis, Forecasts Associates, and a Telemarketing Magazine.

Assuming the \$435 billion is correct, the FCC uses it to wildly overstate the TCPA's effect.

- Business-to-consumer telephone sales is only 4% of all telephone marketing. [17]

Thus, the FCC's figure is inflated by 25 to indicate the TCPA's regulative effect.

To illustrate what \$435 billion is; the entire U.S. deficit was \$400 billion last year.

By comparison, it is unreasonable for the FCC to believe that \$435 billion can be generated by bothering people at home.

- 2) The word "many" is a relative term: 1000 is "many", but against 1 million, it's a scintilla.)  
Simply put, and in fact, **the vast majority of us** find unsolicited sales calls an annoyance.
  - Adhering to the logic used by the FCC in its conclusion; we should all regularly undergo liposuction since it benefits many of us.
- 3) The FCC indicates its concern that regulation of telephone sales solicitations to residents, may "eliminate this option for consumers".  
The TCPA should (in theory) protect only those residents that seek protection.
  - The strong enactment of the TCPA will result in creation (not elimination) of options for consumers.

The FCC also notes it received 757 complaints on auto-dialers, and 74 about live *junk* calls. [18]

This relatively small number of complaints may be attributed to DMA diversionary tactics.

The DMA created the Telephone Preference Service (TPS), the Industry's euphemism for a

"No Junk Call" list. The TPS's purpose... In their own words,

*"TPS will give consumers an alternative to running to their legislators for protection."*

*"We must develop a strong self-regulatory posture [?] if we are to prevent legislation."* [19]

The DMA is a trade group of many of the U.S.'s largest "for profit" firms who benefit from

telesoliciting. *"The goal of the DMA is to discover and to thwart possible government*

*regulation, and we have done it!"* [20] The FCC assists the DMA in thwarting

government regulation by promoting the TPS to consumers [21]:

- without suggesting that unwilling citizens tell *junk* calling firms to stop bothering them.
- or suggesting that citizens write their legislators to demand effective regulation.
- or informing citizens that adherence to the TPS is voluntary on the part of the Industry.

DMA members who claim to use the TPS, continue to tele-annoy folks listed on the TPS.

This commonly occurs well after the *junk* calling firm had ample opportunity to purge those

who have asked the DMA to be placed on its TPS. Excuses for the intrusions range from:

- "Your not on the TPS." (In one case of this excuse, the DMA got the citizen's listing request by certified mail far enough in advance of the call for the TPS to have been effective.)
- "We have no right to purge another's call list." (a telemarketing *service agency* favorite)
- "We will solicit our own customers as we please." (local phone companies use this a lot)

At least one list compiler actually used the TPS to *flag* those on it... and still sold their numbers.

Relating to paragraph #25 - NOTICE OF PROPOSED RULEMAKING, the FCC states:  
The FCC cites Chairman Markey's comments to indicate that ADRMP's harm privacy more

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[17] see Houston Chronicle: 9/16/91, **Working the Phones** quotes the 1990 Annual Guide to Telemarketing.

[18] As the FCC is now *involved in telemarketing*, Private Citizen, Inc. (PCI) is registering (under separate cover), the complaints of approximately 3000 citizens and businesses concerning "live telephone solicitation practices". In doing so, PCI is acting within the scope of its agency agreement with and on behalf of its subscribers.

[19] see Advertising Age: 5/20/85, R.Borders, chair-elect of DMA Telephone Mktg. Council, speaking during the first year of the TPS's operation.

[20] see DM News: interview published 10/22/90, Jonah Gitlitz, DMA President

[21] see FCC document # 63203: ICB-FS-UNSOL-1 April 1990 UNSOLICITED CALLS

than live calls. Yet the quotes cited make the point that, by comparison, both types of calls do very similar privacy damage.

To wit: Live solicitors call "more than 19 million" citizens per day.

ADRMP's "have the capacity to call 20 million" citizens per day.

Chairman Markey's comments also correctly noted that ADRMP's place calls randomly, thus calling unlisted numbers. But all too often, live callers call unlisted numbers when dialing sequentially. Sequential dialing is very popular with newspaper sales efforts. (What is the difference, if a machine or a person sequential dials a hotel room?)

Perhaps most complaints target ADRMP's because no one is on the line to yell at when they come in. Regardless, our right of privacy at home in the area of phone solicitation consists of our right to be left alone. How it is that we are summoned from our bath or bedroom by junk callers is of less concern than call itself. Since people are annoyed with both types, the FCC should enable citizens to protect themselves from both.

### REGULATORY ALTERNATIVES TO RESTRICT LIVE OPERATOR SOLICITATIONS

Simply put, and in light of the overwhelming common disdain held by citizens for junk calls; the list that should be created by the FCC is a national Do Call List. The rationale for it is self-manifesting. It would be cheap, short, contain only those who do not mind having their phone numbers distributed, and extremely valuable to the telephone solicitation industry. Remember the telemarketer's cliché of, "We don't want to call anyone who doesn't want to be called"? Pursuant to Industry's own words, such a list should be more than they could ever hope for. Same goes for the vast majority of the people of the United States. As for the Constitutionality of such a "prior ban", other types of annoying exercise of free speech are commonly banned... such as blaring sound trucks on residential streets.

Failing the implementation of a Do Call list, a Do Not Call list should be instituted... without the exemptions. A Do Not Call list which exempts large segments of this intrusive industry, will inevitably be presented as their license to disturb us in defiance of our requests that such callers stop calling. As for anyone who wanted to be called by a banned entity, that citizen may contact the firm and authorize their calls to continue. Such a database can be easily maintained with "number only" information being supplied to the telesolicitors. Lejeune Associates of Florida already has a system it offers to the Industry that will serve a No Call Database quite nicely. The FCC is aware of Lejeune's capability. Indeed, Private Citizen, Inc. has been sending its Private Citizen [No Call] Directory to those involved in the junk call industry since 1988. It is not an exceedingly difficult technological feat.

Trade publications already report that the FCC is well on its way to effectively gutting the TCPA. The May 4th, 1992 issue of the DM News, wrote its preliminary epitaph: *"The [FCC], in giving surprising support to outbound telemarketing, has also taken a softer-than-expected stand on automatic dialers and recorded messages."* *"Though tentative, it is clear the FCC favors 'as little regulation as possible,' said Richard Barton, senior vice president for government affairs with the [DMA], which has quietly pushed for many of these positions."*

The FCC has an opportunity to choose between success, failure, and calamity in the TCPA's implementation. Regardless of what is evident today, I hope it will protect the rights of residents who want to be left alone! I fear that, pursuant to President Bush's instructions, the FCC will accomplish the opposite.

As a baseline, and unless otherwise advised by the FCC, I will assume the FCC's agreement with the following premise;

That any telephone calling entity - be it commercial, or non-commercial, having been advised by a telephone subscriber directly, by his or her agent or via a database, that the subscriber is unwilling to freely accept telephone calls from the notified calling entity, shall have a duty to respect the collateral rights of that subscriber, and the subscriber's exercise thereof, notwithstanding the involvement of an overdue lawful debt owed to the solicitor or agent thereof.

I urge the FCC to clearly state its sense of this important matter concerning our right to be left alone.

PRIVATE CITIZEN, INC.

By its President,



Robert S. Bulmash  
c/o Private Citizen, Inc.  
P.O. Box 233 Naperville, IL 60566

encl: Private Citizen, Inc. authorization form  
Letter from PaineWebber Sr. VP and General Counsel re: telephone solicitation



To: Those involved in the *direct marketing / telenuisance / telemarketing / junk call* industry,  
From: See my listing in the Private Citizen Directory, or see the reverse of this document,  
Subject: The following is transmitted to you by my agent, Private Citizen, Inc., on my behalf:

## NOTIFICATION & OFFER

- I consider junk calls (as defined below), to be an annoying invasion of my privacy, and an interference with my ability to peacefully enjoy my property. You are now instructed to carefully respect my rights in this regard!
- I am unwilling to allow your free use of my time and telephone for such calls and offer you such use on the following terms:
- I will accept junk calls, placed by or on your behalf, for a \$100 fee, due within 30 days of such use.
- Each such call will be a separate acceptance of this offer, and upon its answer-ratification, all involved entities in receipt of this document will be bound by the resulting agreement and all terms contained herein.
- Your junk call to me will constitute your agreement to the reasonableness of my fee, my appropriate recording of such call, and your payment of all reasonable legal fees and/or collection costs as may be required.
- This offer extends for one (1), year from the date of its latest receipt by you, or until I may expressly modify it.
- Note that non-payment of charges billed as a result of your telemarketing activity, may be construed to indicate; your defiance of my request that you leave me alone and rejection of duty to respect my privacy, and/or your intent to unjustly enrich yourself at my expense, and/or your maintenance of a nuisance, and noisome trade at my expense.
- I may deem such wrongful, and/or tortious behavior as a cause of action based on, but not limited to implied, constructive, or quasi contractual obligation, and in which case I may endeavor to collect punitive, and/or exemplary damages as well.
- I consider the sale or rental of my name and any other identifying information to be a conversion of my property (name). A \$100 fee will be due within 30 days of each such conversion, payable to me by involved and notified entities.
- I hereby certify that I subscribe to PCI's NOTIFICATION & OFFER (below), and incorporate it with mine wherever possible.

Private Citizen, Inc. (PCI), for itself and its subscribers, hereby Notifies and Offers your organization as follows;

- The Private Citizen Directory is the property of PCI. It is not to be sold. A transfer of it must include this document.
- You may verify the intent and authenticity of those listed in PCI's Directory (details from PCI), by:
  - mailed inquiry to those listed in PCI's Directory (PCI can forward your request to those for whom you have no address),
  - inspection of original Authorization Forms at a location agreed upon by both PCI and the inspecting entity,
  - inspection of copies of Authorization Forms mailed to a location of your choice,
- Responding to a telephoned verification request is a service offered by those listed in PCI's Directory and obligates such callers to compensate called subscribers \$100 per call. The terms and conditions described above apply here as well.

## DEFINITION OF TERMS

PCI, and those listed in the Private Citizen Directory define the terms Telemarketing / Telenuisance / Junk call as:

- A telephone call to the premises of a PCI subscriber, delivered live or prerecorded, by voice or facsimile,
- by or on behalf of an organization, including but not limited to its agent, dealer, franchisee, contractor or subsidiary,
- without both an existing direct relationship with, and fully informed, affirmative authorization of the party called,
- whether such calling organization be of a commercial, non-profit, survey-research, or political nature and,
- dialed either randomly, sequentially, automatically, manually or intentionally targeted,
- intended to sell, rent, survey/poll, solicit information about, encourage donations to, generate/qualify sales leads for, create interest in or renew subscriptions for anything (tangible or intangible), of concern to the calling entity.

Junk calls include those by a firm having an established relationship with the called party, if the call is not related to the business established between them (ex. a city bank junk calling its credit card holders to peddle a city travel package).

Junk calls do not include calls made to collect debts if payment is not made per agreement, nor do they include calls made when both the calling and called individuals involved are personally acquainted with each other.

PaineWebber Incorporated  
1200 Harbor Blvd.  
Weehawken, NJ 07087  
201 902-6630

Robert M. Berson, Esq.  
Senior Vice President and General Counsel

# PaineWebber

July 10, 1991

Robert Bulmash  
Private Citizen, Inc.  
Box 233  
Naperville, IL 60566

Dear Mr. Bulmash:

Gail Wickes has referred this matter to me for further response. As I know you are aware, various consumer groups are working at the state and federal level to enact legislation governing the practice of "cold calling." At this time, however, there are only a few jurisdictions with current prohibitions against the use of telephone lines for legitimate purposes. To my knowledge, your "client" does not reside in such a jurisdiction.

Listing one's telephone number in an available public document such as a directory may invite desired as well as undesired contact. You and your clients know that. Persons desiring unwanted telephone calls from strangers can avail themselves of unlisted, hence unpublished, telephone numbers. Moreover, if one receives an undesired call, there is always the option of hanging up. A recent article in The Wall Street Journal respecting your organization makes it clear that there are a variety of equally effective defense tactics which can be employed.

Whatever response a caller from PaineWebber may receive, our approach is to be polite, inquiring, and informative. It is not our intent to annoy or to inconvenience anyone, but we currently have the same right to the telephone lines as do the members of Private Citizens, Inc. have to take steps to limit access, and indeed, to deny it by having unlisted numbers.

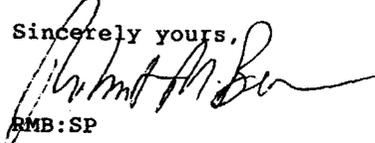
We regret that we cannot assure you that those who subscribe to your service for a small fee will, in fact, be assured of the privacy they believe you can afford them by your efforts.

PaineWebber

Letter to Mr. Bulmash  
July 10, 1991  
Page Two

You are requested to direct any future correspondence or inquiries to me. As The Wall Street Journal also reported, some organizations may feel it incumbent upon themselves to charge you for their time. Please bear that in mind.

Sincerely yours,



RMB:SP

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