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

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
THE TELEPHONE CONSUMER) CC Docket No. 92-90
PROTECTION ACT OF 1991)

REPLY COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Pursuant to the Notice of Proposed Rulemaking ("NPRM"), released April 17, 1992, American Telephone and Telegraph Company ("AT&T") hereby replies to the comments filed in response to the NPRM.

The NPRM was issued pursuant to the mandate of the Telephone Consumer Protection Act of 1991 ("TCPA"), which prohibits telemarketer's use of autodialers employing artificial or prerecorded messages to make unsolicited calls and restricts the operations of telemarketers who use autodialers or telephone facsimile machines in tandem with live operators. The NPRM (¶¶ 27-33) sought comments on five Commission proposals to implement the "regulations, exemptions to the applicability of the statute's prohibited uses, and technical requirements applicable to autodialers and facsimile machines." (NPRM, ¶ 7).*

* The five proposals are: (1) the establishment of a single national database; (2) use of network technologies to screen out telephone solicitations; (3) special markings in directory listings of customers who do not wish to receive telemarketing solicitations; (4) imposition of time-of-day restrictions on when telemarketers may call; and (5) a requirement that companies establish, operate, and maintain their own do-not-call lists.

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List A B C D E

AT&T (p. 7) demonstrated in its initial Comments that the Commission's proposal that telemarketing companies establish and maintain business-specific do-not-call lists appears to best accommodate all competing interests. Business-specific do-not-call lists (1) preserve consumer choice; (2) are cost-effective to establish and maintain; (3) would significantly reduce delays and errors in processing do-not-call requests; and (4) would provide greater protection of consumers' privacy. AT&T also showed that the proposal for the establishment of a national database has merit but raises concerns that need to be addressed. First a national database could prevent telemarketers from reaching willing recipients and thereby would restrict consumer choice. Moreover, the database could be expensive and difficult to update efficiently, and raises concerns regarding the protection of consumers' privacy.

The commenters overwhelmingly concur that the alternative of business-specific do-not-call lists is "the most economical and consumer-result oriented approach to addressing concerns about unwanted telephone solicitation."* American Express (p. 9), for example,

* American Telemarketing Association, Inc. ("ATA"), p. 2; see, e.g., Ameritech, p. 15; Banc One Corporation ("Banc One"), p. 17; Citicorp, pp. 23-28; Cox Enterprises Inc. ("Cox"), pp. 6-8; Direct Marketing

(footnote continued on following page)

notes that "[m]any companies already have voluntarily implemented their own company-specific policies for protecting residential subscriber privacy" and it would seem needlessly wasteful "to require such companies to abandon existing programs merely to replace them with new procedures." Similarly, TWT (pp. 10-11) confirms that "where companies undertake in-house suppression, market forces will significantly eliminate those telephone solicitations directed at consumers who do not wish to receive them." NRF (p. 9) states that "[a]lthough certainly not without cost to merchants, this approach at least affords the maximum measure of flexibility and therefore the least cost [to consumers]." Olan Mills (p. 8) concurs: "[n]o other option before the Commission promotes consumer choice -- a fundamental value of our free market system."

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Association ("DMA"), p. 6; Gannett Co. ("Gannett"), pp. 5-7; Household International ("Household"), p. 14; MCI Telecommunications Corp, Inc. ("MCI"), p. 4; Olan Mills, Inc. ("Olan Mills"), pp. 7-10; Pacific and Nevada Bell ("Pacific Companies"), p. 14; Safecard Services, Inc. ("Safecard"), pp. 5-10; Sears Roebuck & Co. ("Sears"), pp. 7-8; and Southwestern Bell, pp. 10-11. In addition, all of the more than 50 commenters that filed from the newspaper industry advocate business-specific do-not-call lists.

The vast majority of commenters, however, express reservations regarding a national database. ANA, for example, (p. 4) asserts that "this option would prove to be anti-consumer," because it "would severely limit consumer choice.* Mary Kay (p. 1) notes that a national database "is a totally unworkable idea," mainly because it "would be a financial burden far exceeding [a telemarketer's] ability to bear it."** SWBT (p. 12) states that consumers "who wish to receive no solicitation calls whatsoever may become dissatisfied when, after choosing to participate in the [national] data base, they receive what they thought were prohibited telephone calls"

* See also, e.g., American Express p. 4; Association of National Advertisers, Inc. ("ANA"), p. 4; ATA, p. 2; Banc One, p. 16; Community Benefits Corporation, p. 1; DMA, pp. 10-18; MCI, p. 2; Knight Ridder, p. 1; Merrill Lynch, p. 4; Pace Setter Corporation ("PSC"), p. 4; and, Time Warner, Inc. ("Time"), p. 5 ("A national database is too simplistic a reaction to Congressional concerns").

** Mary Kay (p.1) (emphasis in original), see also, e.g., American Newspapers Publishers Association ("ANPA"), p. 8; American Service Telemarketing, Inc. ("ASTI"), p. 1; Consumer Banking Association ("CBA"), pp. 7-8; Digital Systems International, Inc. ("Digital"), p. 2; DMA, p. 26; DSA, p. 3; Gannett, p. 6; Household, p. 12; J. C. Penney Company, Inc. ("J.C. Penney"), p. 18; Mary Kay Cosmetics ("Mary Kay"), p. 2; New England Telephone and Telegraph Company and New York Telephone Company ("NTCA"), pp. 18-19; Olan Mills, p. 13; PSC, pp. 12-13; RMH Telemarketing, p. 1; and, Safecard, p. 8.

from solicitors exempt under the TCPA.* And several commenters express concern that establishment of a national database "would put consumer privacy at even greater risk."**

A few parties indicate that they support the national database alternative.*** In particular, Privacy Times (p. 2) prefers the national database, because business-specific do-not-call lists allegedly place an "unwarranted burden on consumers to find every telemarketing firm and then notify each one separate of their desire not to be called." Similarly, CA (p. 2) believes that a national database "avoids the added costs and problems of dealing with separate state databases or lists that are developed by separate companies that may use inconsistent standards." Yet, as numerous other commenters from the telemarketing, telephone, computer, newspaper and financial industries clarify, consumers will not have to seek out every telemarketer because "[t]he more egregious practices complained of by consumers will

* See also, e.g., ANA, p. 4; ANPA, pp. 8-10; DMA, pp. 13, 25; Mary Kay, pp. 1-2; MCI, p. 5; Merrill Lynch, p. 3; NATA, p. 8; Privacy Times, p. 2; and PSC, p. 4.

** CBA, p. 7. See also, Consumers Janet H. and Robert R. Buchan, pp. 2-4; Cox, pp. 6-8; J.C. Penney, p. 13; PSC, pp. 6-7; and, Student Loan Marketing Association ("SLMA"), pp. 28-32.

*** See, e.g., ACLU, p. 1; Consumer Action ("CA"), p. 1; Harcketts, John (letter); Sullivan, Carol (letter); Privacy Times, p. 2; and National Consumers League ("NCL"), p. 5.

be substantially reduced or eliminated" by the prohibitions of the TCPA itself.* Thus, the burden on the consumer should be minimal because the consumer will need to inform only those telemarketers who fail to comply with the TCPA, and, as TIC (p. 4) notes, "[i]t is premature to assume that, in the wake of the debate raised by the TCPA, telemarketers will not act in an increasingly responsible manner.** Consequently, it appears, that if any further restrictions should be placed upon live operator solicitation, it should be through the implementation of business-specific do-not-call lists.***

Several commenters request clarification of certain aspects of the Commission's proposals in the NPRM. First, many parties request the Commission to

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- * Ameritech Operating Companies ("Ameritech"), pp. 13-14; see, e.g., American Civil Liberties Union ("ACLU"), p. 2; American Express Company ("American Express"), pp. 2-4; Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), p. 2 (out of 1.5 billion live solicitations, only 74 complaints in 1991).
 - ** Tenekron Infoswitch Corporation ("TIC"), p. 4. Indeed, several commenters indicate that no further restrictions on live operators are necessary. [Cites]
 - *** Those commenters who address the Commission's other three alternatives (directory markings, technical blocking and time-of-day restrictions) are also almost entirely in agreement with AT&T's position that those alternatives are deficient in many respects and should not be adopted. See, e.g., ABA, p. 5 (network technologies could hamper debt collection efforts); American Express, p. 14 (printed directories would have to be converted to electronic form, which would be costly, cumbersome and quickly outdated); Citicorp, pp. 33-34 (network technologies presents innumerable problems); DMA, p. 29 (time-of-day restrictions is not responsive to TCPA purposes).

confirm that the statutory definition of "automatic telephone dialing equipment" does not include automated dialing devices that are not coupled with artificial or prerecorded voice solicitations.* AT&T supports this requested clarification. The central impetus for passing the TCPA was to ban prerecorded solicitations, not to bar the use of devices which merely dial numbers automatically in order to connect the called party with a live operator.** ACA, for example, (p. 7) notes that it "believes that § 227(d)(3) of the TCPA was clearly directed at the use of 'artificial or prerecorded voice systems' as distinct from the requirements applicable to automated dialing."***

* E.g., American Bankers Association ("ABA"), p. 2; American Express, pp. 6-8; ATA, p. 2, American Collectors Association ("ACA"), p. 7; Ameritech, pp. 10-12; Audio-Technica U.S. Inc. ("Audio"), p. 1; Banc One, pp. 9-12; BellSouth, pp. 3-5; Bellingham Herald, pp. 1-2; Centel, p. 2; Citicorp, pp. 20-22; CBA, pp. 4-6; Digital, p. 3; Electronic Information Systems, Inc. ("EIS"), pp. 1-2; Goshen News, p. 1; GTE, p. 6; InterVoice, pp. 1-2; J.C. Penney, pp. 2-3; Johnstown Tribune Publishing Co., p. 1; North American Telecommunication Association ("NATA"), pp. 3-5; NYNEX, pp. 19-28, Ohio Student Loan Commission ("OSLC"), p. 1; Olan Mills, pp. 28-30; Pacific Companies, p. 1; Princeton Packet, Inc., p. 1; Sears, p. 2; Wachovia Student Financial Services ("Wachovia"), p. 1; Zacson Corporation ("Zacson"), p. 1.

** See, Senate Report No. 102-178, p. 1971, Legislative History to S. 1462, the "Automated Telephone Consumer Protection Act," introduced July 11, 1991.

*** Section 227(a)(1) of the Communications Act sets forth the definition of an automatic telephone dialing system. This definition should be added to Section 68.3 of the Commission's Rules. Defining

Certain commenters also seek clarification of the notification and use requirements for facsimile machines. The Commission is directed to implement Section 227(b)(1)(c) of the TCPA, which prohibits the use of "any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine."* Sprint notes (p. 5) that this language "does not recognize the significant difference between facsimile advertising originators and facsimile broadcast service providers and needlessly and unreasonably restricts broadcast facsimile services."** Similarly, SNET (p. 8) states that it "cannot and should not monitor the content

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automatic telephone dialing systems under Section 227(a)(1) of the Communications Act would assure that the rule proposed in Section 68.318(c)(3) would apply only to the types of dialing systems discussed in this proceeding.

* Thus, the Commission has proposed Rule 64.1100(a)(3), which states that "[n]o person may use a telephone facsimile machine or other device to send an unsolicited advertisement to a telephone facsimile machine."

** GTE and Sprint seek clarification of proposed Rule 68.318(c)(4), which requires identification of the sender, date, time and the sender's telephone number. See GTE, p. 11; Sprint, p. 7. AT&T agrees with GTE's (p. 10) support of the Commission's "proposed revisions to Part 68 to implement the technical requirements for facsimile equipment." See Attachment A. Consequently, AT&T (p. 4) supports the interpretations that such machines "be manufactured with the ability to mark each page with certain information identifying the sender."

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of any message originated by a sender subscriber." AT&T agrees. The Commission should clarify that the prohibition in Section 227(b)(1)(c) of the TCPA against sending unsolicited advertisements to a telephone facsimile machine applies to the originators of the facsimile message, not to the service providers that merely transmit the message to its destination and do not determine content or distribution.*

CONCLUSION

For the reasons stated herein and in AT&T's May 26, 1992 comments, the proposal that telemarketing companies be required to establish, operate and maintain business-specific do-not-call lists appears to best accommodate all competing interests.

Respectfully submitted,

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Dated: June 25, 1992

* See AT&T, p. 4; Sprint, p. 6; SNET, p. 8-9; see also, GTE, pp. 10-11; Pacific Bell, pp. 2-6; and Sprint, pp. 5-7.

ATTACHMENT A

Re: Docket 92-90: Proposed Revision of
Section 68.318 (c)(4)

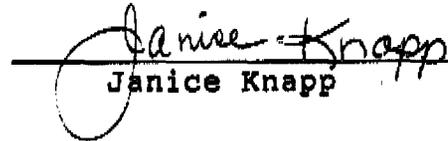
Facsimile machines: Identification of the sender of the message. Facsimile machines manufactured on or after December 21, 1992 shall be capable of sending with each message the identifying information specified below. The required information shall be either in a margin at the top or bottom of each transmitted page, or on the first page of the transmission. The required information is the date and time of the transmission; the identification of the business, other entity, or individual sending the message; and the telephone number of the sending machine or of the business, other entity, or individual. With each facsimile machine, the manufacturer shall provide customer instructions alerting users to their obligations to comply with the Telephone Consumer Protection Act of 1991. Specifically, the customer instructions shall provide the following information:

The Telephone Consumer Protection Act of 1991 makes it unlawful for any person to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

In order to program this information into your facsimile machine, you should complete the following steps. (Insert here instructions for programming the facsimile machine with the required information).

CERTIFICATE OF SERVICE

I, Janice Knapp, do hereby certify that a true copy of the foregoing Reply Comments of American Telephone and Telegraph Company was served this 25th day of June 1992, by United States mail, first class, postage prepaid, upon the parties listed on the attached service list.


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June 25, 1992

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