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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
The Telephone Consumer Protection Act of 1991	)	CC Docket No. 92-90
	)	

REPLY COMMENTS OF DIRECT MARKETING ASSOCIATION

In its Petition for Clarification and Reconsideration, the Direct Marketing Association ("DMA") requested clarification of those aspects of the Commission's rules implementing the Telephone Consumer Protection Act ("TCPA") relating to (i) disclosure requirements for live operator calls, (ii) the applicability of the calling hour requirements, (iii) the status of live operator calls made on behalf of, as well as those made by, tax-exempt organizations, and (iv) the Commission policy regarding the period of retention of do-not-call lists. No oppositions to our proposal have been filed, and the comments submitted by other parties responsive to our Petition[1/] are supportive of, and amplify upon, the modifications we seek. We therefore reply very briefly for the purpose of explaining two matters addressed in our Petition for Reconsideration and to urge the Commission to act upon this Petition as promptly as possible. In support, the following is stated:

1/ See, e.g., Comments of Olan Mills, Inc.; Comments of Newspaper Association of America; Comments of the Nonprofit Group.

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List A B C D E

1. Retention of Do-Not-Call Lists. In its comments, Olan Mills suggests that the five year period of retention that we have proposed should apply to the "DNC list ... regardless of whether the list is kept by name or telephone number." Comments of Olan Mills at 2. We agree. Some telephone marketers may retain the do-not-call lists by telephone numbers, others by name and telephone number, and still others by name, address and telephone number. Our basic point is that, regardless of the information fields contained within a do-not-call list, it will, over time, become obsolete. If marketers are required to maintain the list on a permanent basis, there will be unintended and harmful consequences both to consumers who do not wish to receive particular telephone marketing calls as well as those who do. Plainly, some system permitting telephone marketers to purge obsolete information from their do-not-call lists is required. Our proposal to permit telephone marketers to purge entries on their do-not-call lists after a period of five years, regardless of the information fields contained in the list, is a simple and effective means of appropriately balancing and harmonizing the purposes of the TCPA with legitimate consumer and business interests.

2. Disclosure Requirements. The Newspaper Association of America points out that there are reasons, in addition to those advanced by the DMA, to modify the Commission's disclosure rule for live operator calls, and to require disclosure of the marketer's address or telephone number in the case of those calls only upon

consumer request. Comments of Newspaper Association of America at 3. In our Petition, we have pointed out that the inflexibility of the rule in relation to disclosure of telephone number or address creates problems because it would compel telephone marketers to provide this information "even when the consumer already has the information, explicitly refuses it, or otherwise signifies that he or she does not want it." DMA Petition for Clarification at 3. In its comments, the Newspaper Association of America notes the existence of yet another circumstance in which the provision of this information is both potentially annoying to consumers and unnecessary; it points out that "accessing" a newspaper "is not a difficult task." In fact, there are many businesses -- local and national -- for which the telephone number or address can readily be obtained, especially if the consumer has done business with the marketer on prior occasions.

In short, there are a number of circumstances in which the mandatory provision of a telephone number or address at which the marketer can be reached is unnecessary, inappropriate and potentially annoying to consumers. In the case of live operator calls, these problems, as well as the related enforcement problem, can be avoided without impairment of the basic purpose of the Commission rule by requiring the disclosure of address or telephone number only if the consumer requests that information.

3. <u>The Need for Prompt Action on Reconsideration</u>. The comments submitted in response to DMA's Petition show that the

narrow and modest changes we seek to the Commission's rules are consistent with consumer interests and the legitimate business needs of the broad range of industries and companies that use the telephone as a direct marketing medium; they are, therefore, in harmony with the fundamental purposes and terms of the TCPA. While we are mindful that the Commission has before it a heavy agenda and responsibilities, it is now clear that the matters on which we seek clarification or reconsideration are not controversial. We hope, therefore, that the Commission will act favorably on the DMA Petition at the earliest possible time. This will advance accomplishment of the objectives which Congress and the Commission set out to achieve in the enactment and implementation of the TCPA.

Respectfully submitted

Ian D. Volner
Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 293-3860

Counsel for the Direct Marketing Association

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