

May 1, 2000

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92-90

Office of the Secretary  
Federal Communications Commission  
445 Twelfth St. SW  
Washington DC 20554

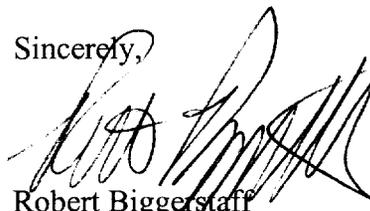
Dear Secretary:

Please find enclosed my Request for Clarification of the Commission's rules implementing the Telephone Consumer Protection Act of 1991.

This request addresses the issue of a consumer continuing to do business with a company after making a do-not-call request to that company.

Please feel free to contact me if you need any further information. I remain,

Sincerely,



Robert Biggerstaff  
(843) 740-4525

enclosure

xc: file

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Rules and Regulations ) **CC Docket No. 92-90**  
Implementing the Telephone )  
Consumer Protection Act )  
of 1991 )  
\_\_\_\_\_ )

**REQUEST FOR CLARIFICATION**

Robert Biggerstaff ("Requester") hereby requests that the Commission clarify its prior decisions and implementing rules<sup>1</sup> in this proceeding and/or clarify the Commission's interpretation of the Telephone Consumer Protection Act of 1991 ("TCPA") (Pub. L. No. 102-243, 105 Stat. 2394, December 20, 1991), with respect to telephone solicitations.

The TCPA and the Commission's implementing rules at 47 C.F.R. 64.1200(e)(2)(vi) require that a consumer's "do not call request must be honored for 10 years from the time the request is made." However, some consumers continue to do business with an entity after making a "do-not-call" request; for example, a consumer may ask the local newspaper or a long-distance telephone carrier to stop making telemarketing calls to his home, but continue to subscribe to the newspaper or use that long-distance telephone service.

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<sup>1</sup> 47 C.F.R. Part 64 Subpart 1200.

It is clear from the record, that a "do-not-call" request severs the "established business relationship" exemption:

We emphasize, however, that subscribers may sever any business relationship, i.e., revoke consent to any future solicitations, by requesting that they not receive further calls from a telemarketer, thus subjecting that telemarketer to the requirements of § 64.1200(e).

Report & Order, 7 FCC Rcd 8752, n. 47 (1992); and

We emphasize, however, that a business may not make telephone solicitations to an existing or former customer who has asked to be placed on that company's do-not-call list. A customer's request to be placed on the company's do-not-call list terminates the business relationship between the company and that customer for the purpose of any future solicitation.

Id., at n. 63.

It is also clear that Congress intended a business to respect a consumer's "do-not-call" request despite any continued business relationship:

The Committee emphasizes that businesses should not view the presence of an established relationship as absolute relief from subscribers' privacy requests. If a subscriber asks a company with whom it has an established relationship not to call again, the company has an obligation to honor the request and avoid further contacts. Despite the fact that objecting subscribers can be called based on an "established business relationship," it is the strongly held view of the Committee that once a subscriber objects to a business that calls based on an established relationship, such a business must honor this second objection and implement procedures not to call that twice-objecting subscriber again.

H.R. Rep. 102-317 (1991).

Some businesses have argued however, that continuing to do business (such as continuing to subscribe to the newspaper or use a particular long-distance telephone service) "revokes" or "supercedes" a consumer's "do-not-call" request. This is clearly counter to the intent of Congress as shown above.

Based on the foregoing, Requester requests that the Commission clarify its interpretation of the TCPA and/or the Commission's rules to clarify that:

1) any entity to whom a consumer has made a "do-not-call" request must comply with that request in accordance with the Commission's rules, regardless of whether or not that consumer continues to do business with that entity.

I respectfully ask that this request be given expedited review to the extent possible so that the correct interpretation of the TCPA and the Commission's rules can be effectuated and consumers can be provided the full protections of the statute as soon as possible.

Respectfully submitted,



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May 1, 2000