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> Federal Communications Commission  
> Office of the Secretary  
> Washington, DC 20554  
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> Re: Rules and Regulations Implementing the Telephone Consumer  
> Protection Act of 1991-Comment  
> FCC Docket Nos. CG 02-278 and CC 92-90  
>  
> Ladies and Gentlemen:  
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> Wells Fargo & Company ("Wells Fargo") welcomes the opportunity to  
> comment on the notice of proposed rulemaking by the Federal Communications  
> Commission (the "Commission" or "FCC") to amend the Rules and Regulations  
> Implementing the Telephone Consumer Protection Act of 1991 ("TCPA").  
> Wells  
> Fargo is a diversified financial holding company with over 30 subsidiary  
> banks and over 100 additional subsidiaries that provide financial products  
> and services to consumers. Many of our subsidiaries use telemarketing to  
> inform customers and potential customers of products and services that may  
> be of value to them and are thus directly affected by restrictions on  
> telemarketing. Our comments are confined to the Commission's inquiry into  
> whether it should establish a national do-not-call ("DNC") list either by  
> itself or in cooperation with the Federal Trade Commission (the "FTC").  
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> We believe a single, nationwide "do not call" list and a single set of  
> associated rules would bring tremendous value to both businesses and  
> consumers as long as the principles described below are observed.  
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> 1. Any Federal "Do Not Call" List Should Preempt State Law.  
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> More than half the states have already enacted legislation  
> establishing "do not call" lists which purport to apply to interstate  
> calls  
> to residents of those states, as well as purely intrastate calls. (As to  
> interstate calls, such laws are arguably preempted by the Communications  
> Act  
> of 1934 and/or the TCPA). Many businesses attempt to comply with such  
> laws,  
> even as to interstate calls. However, the multiplicity of state lists and  
> the variations in the details of these state laws constitute a significant  
> and growing expense and compliance risk for businesses operating in  
> multiple  
> states. In addition, the variety of state laws, overlaid by  
> company-specific  
> do not call lists, leads to a great deal of consumer confusion and  
> frustration.  
>  
> One of our objections to the FTC proposal was that it is, at best,  
> uncertain  
> whether the FTC can preempt state law through the exercise of its  
> rulemaking  
> authority. We believe it is clear that the Commission can preempt state do  
> not call laws by exercising its authority under TCPA, and we strongly  
> believe it should do so. We also believe that any "do not call" law or

> regulation should apply to solicitation calls regardless of the business  
> of  
> the caller or whether the call is placed by an employee of the seller or  
> an  
> independent contractor. Accordingly, action by this Commission is required  
> to extend any federal "do not call" requirement to types of businesses  
> that  
> are not subject to the jurisdiction of the FTC.

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> 2. Business Must be Permitted to Call Their Existing Customers

> There are many reasons to exempt calls to customers with whom the  
> caller has an established relationship from the requirements of any  
> general  
> "do not call" list. All but one of the existing state "do not call" laws  
> recognize such an exception. This is not because businesses ought to  
> ignore  
> their customers' desires regarding telemarketing; the point is that there  
> are many situations in which there is no clear line between "customer  
> service" and "sales." A few examples:

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> A. A securities broker calls a client to recommend  
> selling a security in the client's current portfolio. Indeed, under some  
> circumstances, the broker may have a legal obligation to make such a call.  
> But, because the broker will get a commission from the sale, even that  
> could  
> be construed as a "sales" call. And, in many cases, the client will ask,  
> "What should I do with the proceeds?" Any recommendations the broker  
> makes  
> would clearly be within a broad definition of "sales" or "solicitation."

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> B. An auto lease is expiring. The lessor calls to  
> determine whether the lessee intends to make a payoff or return the  
> vehicle.  
> If the customer doesn't want to return the vehicle, the call is likely to  
> flow into a discussion of loan or lease extension/renewal options.

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> C. During a period when interest rates are falling, a  
> mortgage lender may be willing to allow existing borrowers to refinance at  
> lower rates at a very low (or no) fee.

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> D. In a collection or workout situation, the lender may  
> be willing to offer an extension, renewal or new loan to someone who is  
> delinquent. Does making such an offer turn the collection call into a  
> sales  
> call?

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> Without an "established relationship" exception to "do not call"  
> list provisions, legitimate customer service calls will be inhibited and  
> the  
> customers may not be informed of available options that could be of  
> significant value to them. Unlike calls to non-customers, in dealing with  
> existing customers businesses have substantial motivation to treat them  
> respectfully since they can take their business elsewhere.

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> We also believe that the established relationship exception should extend

> to  
> corporate affiliates doing business under the same "brand name" unless the  
> customer specifically asks that organization not to make telemarketing  
> calls. Many businesses, especially financial institutions, carry on  
> different aspects of their business through different subsidiaries for  
> regulatory or tax reasons. In such cases consumers are usually unaware of  
> technical distinctions between legal entities and, indeed, might consider  
> it  
> poor customer service if they were not informed of discounts or other  
> special terms offered by one affiliate to customers of another.  
> California's  
> recently (2001) enacted "do not call" law extends the "established  
> relationship" exception to affiliates using the same brand name, and we  
> believe this is a sensible approach in light of the way many businesses  
> are  
> organized and customer expectations.

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> 3. There Must be a Feasible Method to Check the Status of  
> Single Numbers

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> While most telemarketing calls are made as part of large, organized  
> campaigns, many such calls are made on a one-off basis. Unless some means  
> is  
> provided for callers to economically check the status of a single number,  
> consumers will continue to receive unwanted calls and businesses will be  
> exposed to liability when there is no reasonable means to ensure  
> compliance.  
> In Indiana, for example, the state Attorney General maintains a web site  
> where someone can, without charge, check numbers one at a time to see if  
> they are on the "do not call" list. This permits compliance by sellers  
> making isolated calls. However, because this process is time-intensive,  
> there is no danger that it will be used by anyone making a large number of  
> telemarketing calls to circumvent the requirement to purchase the "do not  
> call" list.

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> 4. Adequate Information Must be Provided to Investigate  
> Complaints

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> One of the ongoing problems for businesses in complying with state  
> "do not call" laws is that the information provided in connection with  
> complaints by consumers who receive calls despite being registered on a  
> "do  
> not call" list is insufficient to investigate the exact source and nature  
> of  
> the call. For example, Wells Fargo has more than 134,000 employees in  
> thousands of locations scattered across almost all 50 states. The typical  
> consumer complaint notice states only that an unnamed person at a specific  
> number (which is on the state's "do not call" list) received a call from  
> Wells Fargo at a particular date and time. Without the full name of the  
> caller, the name of the person to whom the call was directed, a call-back  
> number and a reasonable description of the nature of the call, it is  
> virtually impossible for us to determine whether the call was actually a  
> violation of the "do not call" law-so that we can take corrective action  
> to  
> prevent similar calls in the future-or if it was made for a permitted  
> purpose or, perhaps, was simply a misdialed number.

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> 5. Listings Should Expire Automatically.  
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> "Do not call" listings should expire automatically after a  
> reasonable period-say, three years-if not renewed by the subscriber.  
> American families move, on average, about every five years, and most moves  
> involve a change of phone numbers. In addition, frequent area code changes  
> have become a fact of life. Experience with state "do not call" lists  
> shows  
> that, unless they are purged regularly, many numbers remain on those lists  
> long after they are assigned to another consumer. The burden on consumers  
> of  
> renewing their listings periodically is minimal.  
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> 6. "Do Not Call" Lists Should be Updated No More than  
> Quarterly.  
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> Any proposal to establish a "do not call" list should also establish  
> the frequency with which the list will be updated and the "grace period"  
> between the publication of a new list and when new additions to the list  
> must be observed. Most state "do not call" lists are published quarterly,  
> with a 30-day grace period between the effective publication date and the  
> effective date. This timetable seems to work reasonably well for all  
> concerned. More frequent updates or a shorter grace period will impose  
> additional burdens on businesses that employ telemarketing and the agency  
> maintaining the list, with little corresponding benefit to consumers.  
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> 7. The "Do Not Call" List Provisions Should Not Apply to Any  
> Inbound Calls.  
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> The FTC's telemarketing proposal would have the effect of turning  
> some calls initiated by the consumer into "outbound" calls for all  
> purposes  
> of the Rule. "Do not call" requirements should not apply to such calls.  
> The  
> primary argument for "do not call" lists is that telemarketing calls  
> interrupt other activities, especially dinner. This intrusion factor  
> simply  
> does not apply to calls initiated by the consumer. It is unlikely that a  
> consumer will initiate calls to an organization he or she has specifically  
> asked not be called by. And calls initiated by a consumer who is on a  
> general "do not call" list do not carry any risk of intrusion at an  
> inconvenient time.  
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> Conclusion  
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> We believe a truly national "do not call" list, applicable to all  
> interstate telemarketing calls, would benefit businesses and consumers  
> alike  
> provided it did not interfere with our ability to service the needs of our  
> existing customers.  
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> Please feel free to contact the undersigned at (415) 396-0940 or by  
> email at "mccorkpl@wellsfargo.com" if you have any questions regarding the  
> foregoing comments.  
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Very truly yours,

/s/ Peter L. McCorkell

Peter L. McCorkell  
Senior Counsel