



increasing number and variety of inquiries and complaints involving our rules on telemarketing,” 2/ but (ii) the Commission made no provision for public inspection of the telemarketing inquiries and complaints upon commencing the proceeding, and it has indicated it will be unable to satisfy ATA’s request for the documents under the Freedom of Information Act (“FOIA”) and FCC rules implementing it. *See* 5 U.S.C. § 552(b); 47 C.F.R. § 0.441 *et seq.* *See also* Motion for Extension at 2-7. Specifically, the staff has indicated it will take 6-8 months to provide the complaints about telemarketing cited as justification for potential new FCC telemarketing rules. Motion for Extension at 2-4. The Motion for Extension demonstrated that, given the critical nature of the complaints and inquiries cited in the *TCPA NPRM*, the FCC’s complete dominion over them, and the importance of public review and comment on their significance, good cause exists for extending the initial comment deadline until the documents are made available for public inspection. *Id.* at 3-7. In support of this showing, the Motion for Extension of Time described ATA’s dialog with the staff regarding the ATA’s FOIA request for the documents, and it provided correspondence reflecting same. *Id.* Tabs 1, 3-4.

This Supplement provides additional correspondence reflecting the Commission’s response to ATA’s FOIA request. Under FOIA and the FCC rules, the deadline for an initial response to ATA’s FOIA request was November 14, 2002. *See* 5 U.S.C. 552(a)(6)(A); 47 C.F.R. § 0.461(g). A letter communicating that initial

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2/ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278, FCC 02-250, ¶ 8 (rel. Sept. 18, 2002) (“*TCPA NPRM*”); *see also id.* ¶¶ 8, 26 (noting that FCC received over 11,000 complaints about telemarketing practices in 2000 and 2001 combined, and over 1,500 inquiries about predictive dialing between June 2000 and December 2001).

response is attached hereto (*see* Tab 5). In the response, the staff exercises the ten workday extension of time to respond to ATA's FOIA request under 5 U.S.C. § 552(a)(6)(B). *See* Tab 5. As a result, ATA will not receive a response to its FOIA request until at least November 29, 2002, *id.*, a week after the current deadline for filing comments on the *TCPA NPRM*.

In addition, pursuant to an offer by the staff to provide a sample of the complaints cited in the *TCPA NPRM* while work continues to respond to ATA's FOIA request, which ATA accepted as an interim measure, the November 14, 2002, letter enclosed 250 randomly selected TCPA-related complaints from two months specified by ATA.<sup>3/</sup> While this does not necessarily comport with ATA's understanding that it would receive all the complaints for the two months it specified, the staff's effort, while appreciated, underscores that the vast majority of the complaints and inquiries relied upon in the *TCPA NPRM* will not be available for public inspection prior to the current November 22, 2002, comment deadline. In fact, based on the staff's response, barely more than 2% of the relevant documents will be available for ATA to review, analyze and comment on if the Commission does not extend the time to file comments on the *TCPA NPRM*. Under any standard, this cannot be considered a meaningful basis for "obtain[ing] accurate and complete

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<sup>3/</sup> While the meeting on ATA's FOIA request included discussion of the possibility that the staff could provide in short order a random sample of 250 of the telemarketing complaints cited in the *TCPA NPRM*, it was ATA's understanding that the staff's final offer was to provide by the initial FOIA deadline all the complaints for two months selected by ATA from the two-year period described in the *TCPA NPRM*. This understanding on the part of ATA is reflected in its letter of November 7, 2002, accepting the staff's offer. *See* Motion for Extension at Tab 4.

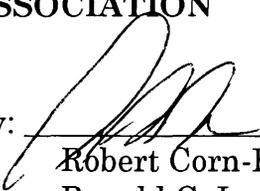
data” for purposes of considering whether to adopt sweeping new rules that would impact the entire telemarketing industry. 4/

Thus, in the interests of ensuring a complete and meaningful record in this proceeding, ATA submits this Supplement to Motion for Extension of Time and implores the Commission to extend the comment period as requested.

Respectfully submitted,

**AMERICAN TELESERVICES  
ASSOCIATION**

By: \_\_\_\_\_

  
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November 15, 2002

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4/ See Motion for Extension at 4-5 (citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 17 FCC Rcd 8114, 8114-15, ¶ 2 (WCB 2002); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd 5357, ¶ 2 (CCB 2002); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 17 FCC Rcd 5355, 5356, ¶ 2 (CCB 2002)).





Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Office of The Bureau Chief

**CGB**

November 14, 2002

Mr. Ronnie London  
Hogan & Hartson, L.L.P.  
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Washington, D.C. 20004-1109

FOIA Control No. 2003-023

Dear Mr. London:

This is in reference to our meeting of November 6, 2002, to discuss your pending request under the Freedom of Information Act (FOIA) for access to consumer complaints related to the Telephone Consumer Protection Act (TCPA), and your subsequent correspondence. Among other things discussed at the meeting, we stated that it would take a number of months and considerable staff resources in order to provide the over 11,000 documents encompassed by your request. At our meeting, in an effort to provide a meaningful sample of your request prior to the close of the comment period in Docket No. CG 02-278, I offered to provide a sample of 250 of the requested documents within a week, that is, by November 14, 2002. In your follow-up letter which was faxed to this office on November 7, 2002, you requested documents from August 2001 and March 2002. Accordingly, please find enclosed 250 randomly selected and redacted TCPA-related complaints received in August 2001 and March 2002, in partial fulfillment of your FOIA request. Please note that this sample is not in lieu of our effort to continue to diligently work to provide a complete response to fulfill your FOIA request.

Pursuant to the FOIA, 5 U.S.C. § 552(a)(6)(B) we are taking the ten workday extension of time. Currently the response is due by the close of business on November 29, 2002. We will bill you for the fees incurred when the request is completely fulfilled.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden  
Chief  
Consumer & Governmental Affairs Bureau

Encls.