

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CC Docket No. 92-90
)	

BELLSOUTH COMMENTS

BellSouth Corporation, for itself and its wholly owned affiliated companies (collectively “BellSouth”), submits the following comments in response to the Consumer and Governmental Affairs Bureau’s recent *Notice of Proposed Rulemaking* in the above referenced proceeding.¹

In the *Notice*, the Commission seeks comments on whether the rules it adopted pursuant to the Telephone Consumer Protection Act (“TCPA”)² “need to be revised in order to more effectively carry out Congress’s directives in the TCPA.”³ Additionally, the *Notice* seeks comment on “whether to revisit the option of establishing a national do-not-call list.”⁴ While BellSouth certainly supports the Commission’s goal of protecting consumers from the inconvenience and harassment of unsolicited and unwanted telemarketing calls as well as protecting other privacy rights, the Commission has not shown justification for changing the current rules nor for adopting such an expansive undertaking as a national do-not call list (“DNC”). If the Commission does pursue the proposals in the *Notice*, however, it must direct the

¹ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket no. 92-90, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 02-250 (rel. Sept. 18, 2002) (“*Notice*”).

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227.

³ *Notice*, ¶ 1.

⁴ *Id.*

costs for these rules to the companies that perform the telemarketing functions and not to the local exchange carriers.

As support for the proposed overhaul of the telemarketing rules, the Commission cites to “the increasing number and variety of inquires and complaints involving our rules on telemarketing and unsolicited fax advertisements.”⁵ These few statistics, however, seem to be an inadequate basis for implementing a comprehensive set of new rules; other avenues should be investigated. For example, the Commission could seek stricter enforcement of the current rules as a deterrent for the practices that were the reason for the “inquires and complaints.” Indeed, even the establishment of new rules will be ineffective unless they are adequately enforced.

Moreover, many of the proposals in the *Notice*, especially the national DNC list, have the potential to be time consuming, administratively cumbersome, and inordinately expensive to implement. The telecommunications industry is experiencing a very chaotic time – one that is significantly different from the era when the Commission first implemented its rules regarding the TCPA. Competition is thriving in the local exchange market. Economic downturn and financial problems are plaguing the entire telecommunications industry. Carriers, and certainly only one segment of carriers such as LECs, cannot simply absorb the costs of regulation, especially when the regulation is primarily aimed at policing entities other than the carriers. The Commission must, therefore, approach this rulemaking with the understanding that the cost of establishing any new regulations must be placed on the telemarketers and not on the carriers who merely provide a means for the telemarketers to reach consumers.⁶

⁵ *Id.*, ¶ 8.

⁶ The cost of implementing any new rules must rest on the telemarketers. Of course, to the extent a carrier also participates in telemarketing activities, it should share proportionally in the cost.

I. The Commission Should Not Implement a National Do-Not-Call List

The *Notice* seeks comments on many issues. As stated, BellSouth contends that from an overall policy standpoint, the Commission should refrain from a comprehensive rulemaking and should instead seek ways to make the existing rules more effective. If the Commission does move forward with new rules, however, the subsequent points should be adopted.

First, BellSouth does not believe that a national do-not-call list is feasible or necessary. It is infeasible because of the potential cost and confusion it would cause. The costs are self-evident. Not only would such a list require an enormous amount of computing capability and expertise to operate, once created, it would have to be updated and maintained in perpetuity. Such a project could create the need for a sizable organization that will incur significant annual costs that must be spread among a diverse group of entities. No matter how the organization's costs are covered, billing and collecting from the various entities will be challenging. Moreover, the telemarketing companies that are breaking the Commission's current rules, and who are probably the source of a majority of the complaints and inquiries to the Commission, will be the hardest entities from whom to collect payment. Thus, the DNC organization will be forced to collect additional money from law-abiding entities to cover its costs. Accordingly, a national DNC list will in all likelihood punish those entities that are complying with the Commission's rules and inadvertently reward those who work outside those rules.

Additionally, BellSouth believes that a national DNC list is unnecessary and would be confusing to implement. First, in BellSouth's experience the Commission's current rules requiring company-specific do-not-call lists are effective for protecting consumers from harassing phone calls. For any telemarketing activities that BellSouth conducts, it carefully adheres to the requests of any customer to be placed on BellSouth's do-not-call list. Indeed, to

do otherwise would be counter-intuitive to sound business sense. Any reputable firm that continued to contact a customer, or potential customer, after having been told to cease such action surely could not count on obtaining the business of that customer. Accordingly, a reputable firm has sufficient incentive to maintain its own currently mandated company DNC list. Moreover, disreputable firms will not follow the mandates of a national DNC list and, therefore, nothing would be gained by its requirement.

Second, a national DNC list would be confusing for both telemarketers and consumers. As the *Notice* points out, some consumers may wish to be contacted by some companies to learn of their product or service offerings, but be vehemently opposed to being contacted by other companies. This is especially true in households with more than one adult. If a national DNC list is established it would be extremely difficult for a consumer to list those companies that are prohibited from calling or to express parameters around whom in the household may be contacted and who may not. Thus, a national list would have to imply a total prohibition against any provider of goods or services contacting any member of any household included on the list. Such a requirement would not appear to be self-evident to any consumer who requested to be placed on the list and would therefore require a full explanation in order to avoid consumer confusion.

Because of this confusion, one proposal offered by the *Notice* is particularly troubling to BellSouth. The *Notice* suggests that carriers could notify consumers of the national DNC list. This notification, along with the above described explanation, would add significant time to LECs' call time with customers which translates directly to increased cost to the LECs and increased dissatisfaction among the LECs' customers because of longer wait times. Thus, even if the Commission does mandate a national DNC list, it must not place the notification

requirement on LECs, or, if it does, it must include a cost recovery mechanism for the LECs. The cost recovery would need to include costs associated with hiring additional customer service representatives to avoid longer wait times for the LECs' customers.

Another problem associated with a totally exclusive national DNC list is the Commission's queries regarding marketing to consumers with whom the company has an established business relationship. The *Notice* gives, as an example, a consumer that subscribes to a newspaper or credit card and has asked to be placed on the newspaper's or credit card company's DNC list. The *Notice* goes on to ask whether the request to be placed on the DNC list terminates the relationship or whether the consumer must actually cancel his or her subscription or credit card before the relationship is terminated. A national DNC list will exacerbate this situation no matter what the Commission decides. For example, if the Commission decides that a request to be on a national DNC list means that no company may contact the customer, then companies with whom the consumer has business relationships will be prohibited from contacting the customer, even if these companies have more advantageous products or services, from both a price and quality perspective, to offer the customer. Consumers would therefore need to be fully informed of this limitation when signing up for the list. Conversely, if the Commission decides that being placed on a national DNC list does not terminate an established business relationship, some customers may become frustrated if a company, with whom the customer has such a relationship, contacts the customer about other opportunities. Once again, customers would have to be fully informed of this possibility before signing up for the DNC list. The current company DNC list would better address these problems. The marketing companies would rightfully bear the cost of explaining the DNC list to

their own customers and would also bear the burdens – loss of customers or Commission enforcement action – for abusing the requirements of the company DNC list.

II. Other Issues

The *Notice* seeks comments on the interplay between section 222, which governs customer proprietary network information (“CPNI”), and section 227 of the Telecommunications Act of 1996 (“1996 Act”). Specifically, the Commission asks whether a carrier can continue to market services to a customer who has asked that his or her name be placed on a DNC list but who has also provided the carrier with permission to use CPNI for marketing purposes.

BellSouth supports the Commission’s position that even if the customer has given permission to use CPNI for marketing purposes but has also placed his or her name on a DNC list then the carrier cannot call the customer to market other services. The carrier may, however, use other forms of marketing such as direct mail or email.

The Commission should not restrict the use of autodialers to dial residential or business customers. Autodialers can be an efficient use of time, thereby reducing marketers’ costs, which in turn saves consumers money. The Commission presents no basis to support the imposition of restrictions on the use of autodialers. Moreover, limiting the use of autodialers will not prevent the problem that the Commission wants to correct – disreputable telemarketers. As BellSouth has discussed herein, there are less restrictive ways to police disreputable telemarketers than simply restricting the use of tools used by honest telemarketers. Restricting the use of autodialers for all is simply not warranted.

Finally, BellSouth contends the Commission should not have zero tolerance for telemarketing calls to wireless phones. First, for any telemarketing that BellSouth performs, it goes to great lengths to avoid calling a wireless number; however, in some instances customers

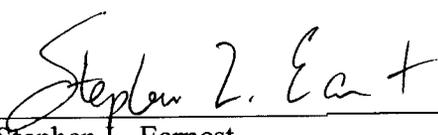
provide their wireless number as their contact number for their own convenience. Any rules that the Commission considers for calls to wireless numbers must therefore include an exemption for customers who provide their wireless number to businesses to be used as a contact number. Additionally, the Commission must keep in mind the changes that are taking place in the wireless market. Because of favorable pricing options, many people today use their wireless phone as a substitute for their landline phone. Calls to a wireless phone, therefore, may be welcomed to those consumers that want to be contacted about products or services.

III. Conclusion

While it agrees with the Commission's policy goals underscoring this *Notice*, BellSouth does not believe new regulations are necessary. If the Commission does move forward with new regulations, however, it must not impose the costs for such regulation on LECs.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 
Stephen L. Earnest
Richard M. Sbaratta

Its Attorneys

BellSouth Telecommunications
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375
(404) 335-0711

Dated: December 9, 2002
472416

CERTIFICATE OF SERVICE

I do hereby certify that I have this 9th day of December 2002 served the parties of record to this action with a copy of the foregoing **BELLSOUTH COMMENTS** via electronic mail, addressed to the parties listed below:

Marlene H. Dortch (*)
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Room TW-A325
Washington, DC 20554

Qualex International (*)
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554


Lynn Barclay

* = via Electronic mail