

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

**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless

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## SUMMARY

Verizon Wireless supports the establishment of a national “Do-Not-Call” list, but only if the Commission adopts certain other requirements. First, the Commission must ensure that there is only one national “Do-Not-Call” list, meaning it must preempt state laws that create separate state “Do-Not-Call” requirements, and it must coordinate with the Federal Trade Commission to facilitate the formation of one list. Second, the Commission should exempt from the national “Do-Not-Call” requirement those businesses that have an established business relationship with a customer on the national “Do-Not-Call” list. Third, the Commission should adopt reasonable time frames for companies to comply with “Do-Not-Call” requirements. Telemarketing companies should have 90 days from the initial request of a customer to be placed on the list to exclude that customer from telemarketing lists, and a “Do-Not-Call” request should remain in effect for no more than three years from the date of the initial request. The Commission should also continue to ensure that wireless customers do not receive autodialed telemarketing calls, or calls using an artificial or prerecorded voice. The Commission should find that no other rules to govern telemarketing are necessary at this time.

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Verizon Wireless hereby submits comments on the Notice of Proposed Rulemaking (“*NPRM*”)<sup>1</sup> in the captioned docket. Verizon Wireless does not oppose the creation of a national “Do-Not-Call” list, provided the Commission also preempts state “Do-Not-Call” requirements. The Commission should also find that no other new rules are necessary to implement the Telephone Consumer Protection Act of 1991 (“*TCPA*”)<sup>2</sup> because customers today have more control over blocking unwanted telephone solicitations than ever before.

**I. INTRODUCTION**

As the Commission notes in the *NPRM*, Congress adopted the *TCPA* as a means to ensure that “individuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade...[are] balanced in a way that protects the privacy of individuals and permits

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<sup>1</sup> 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, CC Docket No. 92-90, FCC No. 02-250 (rel. Sept. 19, 2002) (“*NPRM*”).

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

legitimate telemarketing practices.”<sup>3</sup> The Commission implemented the TCPA by adopting certain requirements that restrict telemarketing, including the requirement for companies to honor customers’ requests not to receive future solicitations through the creation of company-specific “Do-Not-Call” lists. Commission rules prohibit companies from calling customers before 8 a.m. or after 9 p.m., and also require telemarketers to identify themselves when calling.

In addition to “Do-Not-Call” requirements, the TCPA mandated restrictions on the use of automated telephone equipment. The Commission’s rules implementing this portion of the TCPA prohibit autodialed calls or those using an artificial or prerecorded voice without express prior consent to emergency lines, health care facilities, wireless numbers, or any other service for which the called party is charged for the call. The Commission’s rules contain a variety of exceptions to these requirements, permitting companies to use autodialed and artificial or prerecorded voice calling when the call or message is not made for a commercial purpose, is for a commercial purpose but does not include the transmission of unsolicited advertising, is to any person with whom the company has an established business relationship, or when the caller is a tax-exempt nonprofit organization.

The Commission initiated the *NPRM* to examine whether it should revise or clarify its rules governing unwanted telephone solicitations and the use of automated dialing systems.<sup>4</sup> The Commission also seeks comment on whether and how to coordinate action with the Federal

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<sup>3</sup> *NPRM*, ¶ 1, *citing*, TCPA, Section 2(9).

<sup>4</sup> *Id.*, ¶ 1.

Trade Commission (“FTC”), which recently proposed a national “Do-Not-Call” list of its own, and with various state requirements.<sup>5</sup>

Verizon Wireless urges the Commission to create a national “Do-Not-Call” list, but not unless the Commission also preempts state “Do-Not-Call” requirements. There is no need for the Commission to adopt other new regulations at this time.

## **II. THE COMMISSION SHOULD CREATE A NATIONAL “DO-NOT-CALL” LIST, BUT ONLY IF IT PREEMPTS STATE “DO-NOT-CALL” PROGRAMS**

The Commission seeks comment on whether it should reconsider its 1992 decision not to adopt a national “Do-Not-Call” list.<sup>6</sup> At that time, the Commission rejected the national “Do-Not-Call” approach in favor of company-specific “Do-Not-Call” requirements, finding that a national database would be costly to implement and difficult to establish and maintain in a reasonably accurate form.<sup>7</sup>

Verizon Wireless respects the privacy of all individuals by providing toll-free access to the Verizon Wireless “Do-Not-Call” list through Verizon Wireless local call centers. When individuals call to request not to be solicited, this information is added both to Verizon Wireless’s billing systems or an intranet site used to store the data. This ensures that individuals expressing a desire not to be called are removed from lists that Verizon Wireless and its agents use for marketing purposes. In addition, Verizon Wireless accepts all requests from customers

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶ 11.

<sup>7</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order*, 7 FCC Rcd 8752, 8760 (1992).

and non-customers to be placed on the Verizon Wireless “Do-Not-Call” list if the customer makes such a request during a telemarketing or other call from Verizon Wireless.

Subject to certain caveats discussed below, Verizon Wireless supports the creation of a nationwide “Do-Not-Call” registry, although not because company-specific lists are inadequate to protect consumers from unwanted telephone solicitation. Company-specific lists are an easy and effective way for customers to avoid unwanted solicitations from a particular company. The Commission should retain the company-specific “Do-Not-Call” process regardless of whether the Commission adopts a national “Do Not Call” regime, because company-specific lists permit subscribers to block solicitations from certain companies even if they do not place themselves on the national “Do-Not-Call” list.<sup>8</sup> A national “Do-Not-Call” registry would have the added benefit of permitting customers to limit solicitations in one action instead of having to express a preference to every vendor. In addition, as the Commission notes, the proliferation of predictive dialers has made it increasingly difficult for customers to request companies not to call them because frequently these dialers will hang up on the customer or result in “dead air.”<sup>9</sup> A national “Do-Not-Call” list should stop these calls before they start.

Verizon Wireless does not support the creation of a national “Do-Not-Call” registry, however, if it becomes just another “Do-Not-Call” list. The Commission must preempt state “Do-Not-Call” laws at the same time that it incorporates state lists into the national list. Congress gave the Commission authority to create a national “Do-Not-Call” list and directed the

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<sup>8</sup> Companies are likely to maintain company-specific “Do-Not-Call” lists even if there is no FCC requirement to do so because companies save telemarketing resources when they refrain from calling individuals who have expressed a preference not to be called.

<sup>9</sup> *NPRM*, ¶ 15.

Commission to preempt different state “Do-Not-Call” lists if it adopted a national “Do-Not-Call” approach.<sup>10</sup> Preemption of related state-by-state requirements is necessary to streamline company compliance with the national “Do-Not-Call” requirement. It is increasingly difficult for companies offering service in several states to comply with the multitude of inconsistent state laws governing telephone solicitation. As the Commission acknowledges, there is a large and growing number of state-specific “Do-Not-Call” lists, and many of the states have different methods to collect data, charge for the list, and otherwise manage their state programs.<sup>11</sup> In addition, states do not have consistent requirements for formatting, which makes it difficult to store this information in company data warehouses. A single national “Do-Not-Call” list, if it preempts state laws, will solve these problems, but a national list that does not preempt state lists will only make them worse.

As the Commission recognizes,<sup>12</sup> based on the benefits of a national “Do-Not-Call” list, the FTC recently proposed to maintain such a registry. In this process, however, the FTC acknowledged that certain entities such as common carriers would not be covered by the FTC’s rules because they are not subject to the FTC’s jurisdiction. Under the FTC’s proposed rules, consumers would be permitted to add telephone numbers to a national registry. Once a consumer placed his or her number on the registry, telemarketers subject to the FTC’s jurisdiction would be prohibited from soliciting that consumer unless the telemarketer received

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<sup>10</sup> See 47 U.S.C. § 227(e)(2). In addition, Section 2(b) of the Act gives the Commission authority over intrastate matters governed by Section 227. 47 U.S.C. § 152(b).

<sup>11</sup> *NPRM*, ¶ 9.

<sup>12</sup> *Id.*, ¶ 10.

express verifiable authorization to call the consumer. The FTC's rules would also create a "safe harbor" against enforcement actions if a seller implemented certain procedures.

If both the FCC and FTC pursue the national "Do-Not-Call" initiative, both agencies must clearly allocate responsibilities for the management and maintenance of a national "Do-Not-Call" list in a way that ensures that there is a *single* national "Do-Not-Call" registry. There should not be two lists, nor should there be separate, conflicting rules for telemarketers depending on whether they are common carriers or other types of companies.

Although a national "Do-Not-Call" list will permit customers to limit solicitations in one action rather than having to talk to every seller, the Commission should clarify that the national "Do-Not-Call" process is subject to an exception for sellers with an existing or prior business relationship with a customer. That is, even if an individual enrolls in the nationwide registry, companies with business relationships with the individual should be able to telemarket to that individual unless he or she asks to be placed on the company's "Do-Not-Call" list. This exemption is necessary because customers with a preexisting business relationship with a company reasonably may expect that the company will contact them about additional product or service offerings.

By properly structuring the national "Do-Not-Call" process, the Commission can minimize the cost and accuracy concerns that were the basis for its original decision to reject the national "Do-Not-Call" idea. Much more so that 10 years ago, customers today have access to e-mail and the Internet, meaning that there are tools available to customers to submit requests to be included in a national "Do Not Call" list and to maintain the accuracy of such information.

Given the degree of churn in the industry,<sup>13</sup> it is unlikely that any list, state or national, can be accurate for any length of time. The Commission can promote accuracy, however, by permitting customers to submit “Do-Not-Call” requests and updates in multiple ways – by phone, fax, e-mail, and the Internet.<sup>14</sup>

The Commission can also promote accuracy by adopting a reasonable time frame for companies to comply with national “Do-Not-Call” requirements.<sup>15</sup> Companies cannot reasonably comply with customer requests to be placed on the national “Do-Not-Call” list immediately, because this would require companies to update their lists daily. Companies must rely upon the administrator of the nationwide registry to update the nationwide registry. Today many states revise their lists quarterly,<sup>16</sup> and the Commission should consider adopting a similar approach for maintenance of and compliance with “Do-Not-Call” lists.

The national “Do-Not-Call” list should also specify that a request to be placed on this list shall remain in force for three years. The current 10-year timetable for honoring “Do-Not-Call”

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<sup>13</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Seventh Report*, FCC No. 02-179, p. 23 (rel. July 3, 2002) (“*Seventh Report*”). The *Seventh Report* notes that more than 30 percent of wireless subscribers change service providers each year, and this does not include local exchange customers.

<sup>14</sup> The Commission should not require such requests in writing.

<sup>15</sup> Congress directed the Commission to specify the frequency with which a national database will be updated. See 47 U.S.C. § 227(c)(3)(I).

<sup>16</sup> A company called Call Compliance, Inc. has a web site that summarizes certain state “Do-Not-Call” requirements. See [www.callcompliance.com](http://www.callcompliance.com).

requests<sup>17</sup> fails to reflect the fact that customers move and change their numbers. This is particularly true with wireless numbers because of high customer churn.

### **III. THE COMMISSION SHOULD NOT EXPAND ITS OTHER TELEMARKETING REGULATIONS**

The Commission seeks comment on several issues related to telemarketing to wireless subscribers, including the extent to which telemarketing to wireless consumers exists today, and, if so, how wireless customers receive such solicitations, and the nature and frequency of them.<sup>18</sup> In addition, the Commission asks whether wireless telephone numbers should be considered “residential telephone numbers” for purposes of the Commission’s rules on telephone solicitations.<sup>19</sup>

#### **A. Wireless Carriers Do Not Engage In Telemarketing To The Same Extent As Carriers Such As IXC**

Wireless carriers use telemarketing as a means to sell wireless service. This is not nearly as pervasive, however, as the campaigns waged by the major interexchange carriers (“IXCs”). For example, when Verizon Wireless sales personnel “cold call” potential customers, they do not call numbers associated with wireless handsets, but instead call residential telephone numbers. It would be difficult to target wireless handsets in this fashion because wireless numbers are not typically listed in public directories such as the Yellow Pages. For instance, when a customer purchases service from Verizon Wireless, sales people at the point of sale sometimes ask for referrals to friends and family of the customer who might be interested in Verizon Wireless

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<sup>17</sup> See 47 C.F.R. § 64.1200(e)(2)(vi). The Commission seeks comment on this rule. *NPRM*, ¶ 17.

<sup>18</sup> *Id.*, ¶ 43.

<sup>19</sup> *Id.*, ¶ 44.

service. Sales people compare names and telephone numbers provided by the customer to the Verizon Wireless “Do-Not-Call” list, and if a customer is on this list, then the sales person should not call the individual. These calls are individual contacts, not the large-scale initiatives common in the rest of the industry.

**B. Wireless Carriers Call Residential Telephone Numbers, But They Do Not Offer Residential Telephone Service**

The Commission’s rules prohibit telephone calls using an autodialer or an artificial or prerecorded voice message to any telephone number assigned to, among others, *radio common carrier service*, or any service where the party is charged for the call, except in emergencies or with the prior express consent of the called party.<sup>20</sup> Thus, unless there is otherwise an exemption, telemarketers cannot target wireless customers using these devices. By contrast, the Commission’s rules state that *live* telemarketing to *residential telephone subscribers* must occur within 8 a.m. and 9 p.m.,<sup>21</sup> and that a company that engages in this kind of solicitation to *residential telephone subscribers* must have procedures in place to permit customers to place themselves on the company’s “Do-Not-Call” list.<sup>22</sup>

Even though the standards set forth in Section 64.1200(e) of the Commission’s rules apply to residential telephone service, wireless carriers and all other telemarketers must abide by them when they call “residential” telephone numbers to market products and services, including

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<sup>20</sup> 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>21</sup> 47 C.F.R. § 64.1200(e)(1).

<sup>22</sup> 47 C.F.R. § 64.1200(e)(2).

wireless service. Consistent with the requirements of the Commission's rule, Verizon Wireless has a "Do-Not-Call" list<sup>23</sup> to comply with requests not to contact customers.

The fact that wireless carriers must comply with the rules for calling residential subscribers, however, is completely unrelated to whether wireless carriers themselves offer "residential" telephone service that would be subject to the rules. Congress was careful to apply certain provisions of the TCPA to wireless service, and not others.<sup>24</sup> As the Commission is well aware, customers can use their wireless phones virtually anywhere, including at home, at the office, or on the road. Wireless carriers do not limit the offering of their services to "residential" or "business" customers, giving the term "residential" service no meaning in the mobile wireless marketplace.

### **C. The Commission Should Protect Against Autodialed Calls to Wireless Numbers**

Section 227(b)(1)(A) prohibits telemarketing through the use of autodialing or an artificial or prerecorded voice to "any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service or any other radio common carrier service, or any service for which the called party is charged for the call." The Commission seeks comment in the *NPRM* on how to apply this provision to calls to wireless phones that have been "ported" from landline numbers.<sup>25</sup>

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<sup>23</sup> Verizon Wireless also has "Do-Not-E-mail" and "Do-Not-Text-Message" lists.

<sup>24</sup> Compare 47 U.S.C. § 227(b)(1)(A)(iii) (prohibiting calls using automatic dialing systems or artificial or prerecorded voices to any telephone number assigned to a paging, cellular, specialized mobile radio, or other radio common carrier) with 47 U.S.C. § 227(b)(1)(B) (prohibiting *only* calls using artificial or prerecorded voices to any residential telephone line).

<sup>25</sup> *NPRM*, ¶ 46.

In considering this issue, the Commission should ensure that telemarketing calls using autodialing or artificial or prerecorded voice should not be placed to wireless handsets. This is a critical objective for two separate reasons. First, many wireless callers continue to be charged for incoming calls. Although there is a growing proliferation of “bucket” plans, in which customers receive, say, 1000 minutes per month in return for paying a “flat” monthly fee instead of per-call charges, all calls that exceed the customer’s bucket will be charged. Exceeding the bucket allowance is not unusual. Also, many customers, particularly those who use their phone more as a safety feature, have not purchased a bucket plan and continue to be charged for each call. Second, the inherent nature of wireless service means that a customer’s handset may ring in situations where it would be inconvenient or even hazardous to answer the call, for example, when the customer is in a meeting or is driving. Telemarketing calls to wireless handsets that are prohibited today should not be permitted simply because the wireless subscriber happens to use a ported landline number.

Clearly, however, the TCPA did not contemplate local number portability (“LNP”); it was enacted in 1991, while it was not until 1996 that Congress required local exchange carriers to permit customers to “port” their numbers to wireless services. Nor when the Commission decided to require commercial wireless providers to deploy LNP capability did it consider this issue.<sup>26</sup> Verizon Wireless is not aware of any readily accessible technology that would allow a telemarketer to identify quickly which numbers that had been originally assigned to a landline customer have in fact been ported to a wireless number. Without such a technology, telemarketers have no way to “track” a ported number to ensure that the number continues to be

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<sup>26</sup> *Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order*, 11 FCC Rcd 83512 (1996) (subsequent history omitted).

used by a landline subscriber, making compliance impossible as a practical matter. The Commission should thus ensure, as part of its LNP regime, that a technology is in place before the November 2003 date for implementation of wireless LNP, and that telemarketers are able to access that information. For example, if the technology only updates numbering information every three months to reflect landline-to-wireless ported numbers, a telemarketer should not be held liable for calls placed to wireless subscribers during the three month period when the information was not yet available to it.

More fundamentally, however, this problem is yet another reason why the Commission's decisions requiring wireless LNP capability and declining to grant forbearance from that mandate, before this and other issues can be resolved, were ill-advised. CTIA, Verizon Wireless, and other wireless carriers identified numerous other significant problems that the Commission should have addressed in deciding to continue to mandate wireless LNP.<sup>27</sup> For example, the record on Verizon Wireless' petition for forbearance from LNP showed that imposing the mandate would create serious customer service issues because of unresolved wireline-wireless porting issues and would threaten the efficacy of the Enhanced 911 systems that the Commission is attempting to promote.<sup>28</sup> The Commission's recent decision to maintain the mandate failed to address any of these issues. The problem the Commission itself now

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<sup>27</sup> Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184, *Memorandum Opinion and Order* (released July 26, 2002), *appeal pending sub nom. Cellular Telecommunications and Internet Association, et al. v. FCC*, No. 02-1264 (D.C. Cir.).

<sup>28</sup> *E.g.*, Letter to Magalie Roman Salas, FCC, from John T. Scott III, Verizon Wireless, WT Docket No. 01-184, December 20, 2001 (explaining how LNP deployment “may impair the functioning of E-911 systems”); Letter to Magalie Roman Salas, FCC, from Suzanne K. Toller, AT&T Wireless, December 3, 2001 (documenting “significant problems with wireless to wireline pooling” that have not been resolved).

identifies with certain forms of telemarketing to wireless customers using ported numbers is yet another reason why the Commission should immediately conduct a proceeding to examine this and other issues surrounding wireless LNP implementation. If solutions to this and other problems cannot be found promptly, the proper course is to delay LNP until they can be resolved.

**D. The Commission Should Not Adopt Any Additional Telemarketing Restrictions**

Customers have more control than ever before when it comes to screening unwanted telemarketing calls. In addition to Caller ID, there are other products and services that assist customers in protecting their privacy.

For example, Verizon Communications has a product called Call Intercept, which works in conjunction with Caller ID to screen calls when phone numbers do not appear on Caller ID units. The service blocks customers' incoming calls when callers fail to identify themselves and allows users to decide if they want to receive calls from callers who say who they are. With Call Intercept, calls that appear as "anonymous," "private," "out of area" or "unavailable" on Caller ID units are intercepted before the phone rings. Callers hear a message informing them that the subscriber does not accept unidentified calls and requests that they identify themselves by name or organization. After callers record a message, Call Intercept rings the subscriber's phone, plays the message identifying the caller, and provides several options for managing the call. The subscriber may accept or decline the call or send it to voice mail. Given the existence of these products, the Commission should find that no other rules governing telemarketing are necessary at this time.

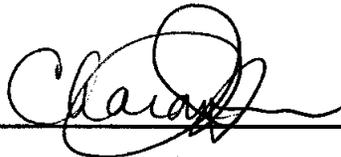
#### IV. CONCLUSION

For the forgoing reasons, the Commission should preempt state “Do-Not-Call” rules, coordinate with the FTC to implement a national “Do-Not-Call” list, and not adopt any additional telemarketing restrictions.

Respectfully submitted,

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