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December 9, 2002

Office of the Secretary
Federal Communications Commission
Room TW-A325
12th Street SW
Washington, D.C. 20554

Re: Notice of Proposed Rulemaking – Update to the Telephone Consumer Protection Act of 1991; CG Docket Number 02-278 and CC Docket Number 92-90

Ladies and Gentlemen:

Call Compliance, Inc. ("CCI") submits the following comments in response to the Federal Communication Commission's Notice of Proposed Rulemaking dated October 8, 2002 ("NPRM"), regarding its review of the Telephone Consumer Protection Act of 1991 (the "TCPA").

CCI began offering its services commercially in the late 1990's, and has established itself as the leading provider of technology-based "do-not-call" compliance services and solutions for the teleservices sector. CCI's Chairman (Dean Garfinkel), President (Alison Garfinkel), and Vice-President of Operations (Stefan Dunigan), have decades of experience in the telecommunications industry, and have been at the forefront of addressing technological compliance solutions to the teleservices industry since the beginning of the do-not-call movement in the early 1990's. CCI's Director of Regulatory Affairs and General Counsel, Joseph Sanscrainte, is regularly sought out as a speaker and author on do-not-call compliance and related technology issues. CCI's Executive Director of Business Development (Robert Kobek) is recognized as one of the pioneers of the teleservices industry in the United States. CCI, regarded as an expert on telemarketing regulations and related compliance technologies, was invited to, and participated in, both forums held by the Federal Trade Commission (in 2000 and 2002) regarding the FTC's proposal to establish a national do-not-call list.

CCI's position as the patent holder and supplier of the only Central Office network-based, centrally deployed do-not-call compliance technology, together with its extensive experience helping companies comply with do-not-call requirements at both the State and Federal levels, gives CCI a unique perspective with regard to the issues confronting the FCC in its review of the TCPA. CCI believes that the central issue of do-not-call policy is how best to protect consumer privacy interests by enabling and fostering compliance by those entities responsible for making telemarketing calls. Across the industry, it is clear that the vast majority of telemarketers are earnestly attempting to comply with the rapidly expanding set of do-not-call regulations at the State level (as well as with the "in-house" Federal requirements.) Consumers justifiably expect

that by placing their names on a do-not-call list, they will no longer receive unwanted phone calls. However, the very nature of the modern telemarketing process, with the multitude of prospects lists, time constraints, volume of calls attempted, merge/purge software limitations, as well as the complex regulatory environment, creates a compliance challenge for the vast majority of, if not all, telemarketers.

CCI was created for the specific purpose of helping telemarketers and regulators solve the technological bottlenecks associated with do-not-call compliance. Our compliance technology has been in limited deployment for over three years, but our recent "SS7/IP" deployment (discussed in detail, below) revolutionizes the compliance equation for regulators, telemarketers, and consumers alike. Simply put, the technology is now in place for all telemarketers nationwide to achieve the maximum do-not-call compliance possible through their own telephone carriers.

CCI would like to thank the FCC for the opportunity to file comments with regard to this important rulemaking process (see comments, below.) We hope that our comments, geared directly at addressing do-not-call compliance issues that relate to our background and experience, will help the FCC in its review of the TCPA.

Sincerely,

/s/

Alison Garfinkel
President
Call Compliance, Inc.

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 Protect Act of 1991	)	CC Docket No. 92-90
	)	
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COMMENTS OF CALL COMPLIANCE, INC.

Network Blocking Technologies

NPRM, Par. 21: "We seek comment on whether network technologies have been developed over the last decade that may allow consumers to avoid receiving unwanted telephone solicitations. If so, we seek comment on whether and how these technologies should influence our analysis of the merits of revising our company-specific do-not-call rules or possibly adopting a national do-not-call list. In particular, we seek comment on what factors the Commission should consider in deciding whether to rely on these technologies."

NPRM, Par. 17: "Are there any industry 'best practices' that might provide telemarketers with possible safe harbors from liability for violating our do-not-call rules?"

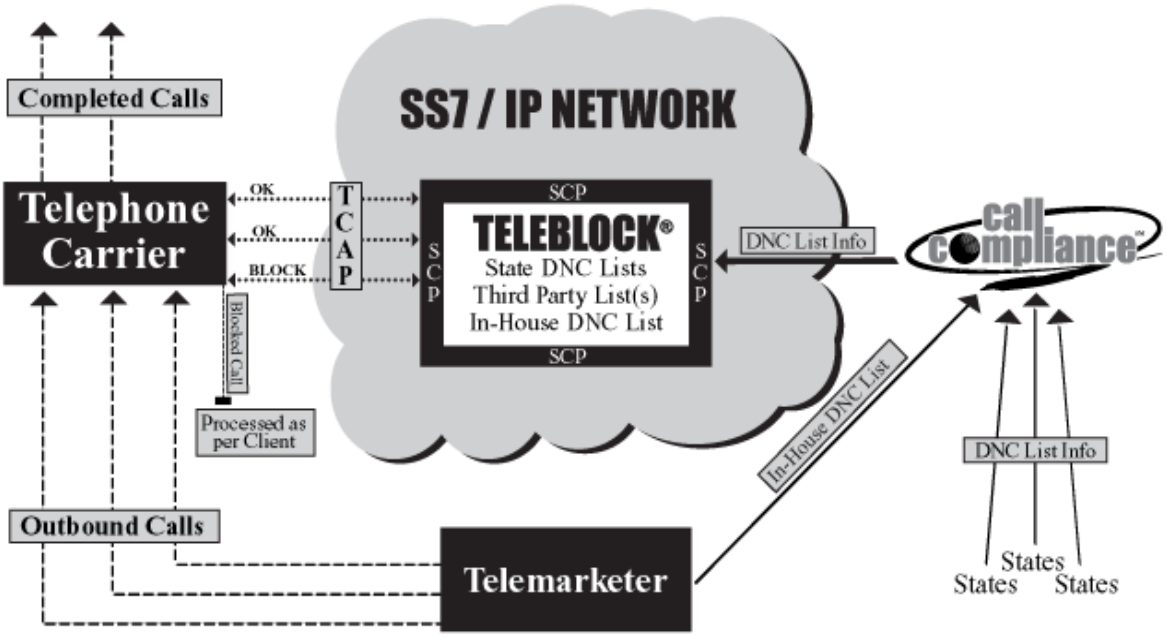
One of the most important technological developments impacting the telemarketing industry and national do-not-call policy is the launch of CCI's patented TeleBlock® screening and blocking platform. TeleBlock® screens outbound calls against do-not-call numbers at the highest possible level of the telecommunications infrastructure of the United States (the SS7/IP network level -- see diagram and discussion below.) Working in alliance with VeriSign, Inc., CCI has created a centralized platform, available to all telephone carriers nationwide, that enables telemarketers to instantly screen and block their outbound calls against all available do-not-call lists (including "in-house" lists.) (The TeleBlock® service has been commercially available for over three years via a limited number of carriers; the new centralized VeriSign platform, available to all carriers, was officially launched in November, 2002.)

TeleBlock® makes it possible for all telemarketers to achieve do-not-call compliance via one centralized screening and blocking process that is provided by the telemarketer's own telephone carrier. With TeleBlock®, a centralized do-not-call database containing information from multiple sources can be accessed in real-time by every single telemarketer in the nation. The need for each individual telemarketer to adopt and deploy so-called "scrubbing" procedures, which are time and labor intensive, complex, and dependent upon a multitude of risk factors, is therefore eliminated.

The TeleBlock® process (as diagrammed below) makes it possible for telemarketers to subject their outbound calls to a screening (and blocking) process that occurs at the "SS7/IP" network level. (See sidebar for term definitions.) The TeleBlock® process requires the collection by CCI of internal do-not-call lists from companies, state lists, as well as any other applicable list(s). This information is then deployed via TeleBlock®, which is located on a Service Control Point (SCP) that resides on the SS7/IP network. (CCI's alliance partner, VeriSign, Inc., is responsible for hosting and managing the TeleBlock® platform on its network.)

SS7: **S**ignaling **S**ystem **7** is a system that puts the information required to set up and manage telephone calls in a separate network rather than within the same network that the telephone call is made on. Using SS7, telephone calls can be set up more efficiently and with greater security. Special services such as call forwarding , toll-free service, and three-way service are easier to add and manage with SS7.
IP: The **I**nternet **P**rotocol is the method or protocol by which data is sent from one computer to another on the internet.
SCP: A **S**ervice **C**ontral **P**oint provides the interface to local and remote databases that contain subscriber and routing information
TCAP: (**T**ransaction **C**apabilities **A**pplication **P**art) The protocol used in an SS7 network for sending database queries to a service control point (SCP).

Telemarketer access to and control over the TeleBlock® system takes place via a web-based graphical user interface, which enables telemarketing entities to choose which outbound calls will be screened, as well as which specific lists they will be screened against. (Other available administrative features include: number override to allow certain numbers on lists to be called; full editing capabilities (additions/deletions/updates); searching capability; a reporting module with standard and customizable reports; administer created user accounts and passwords; and display of ANI/T1 authentication code tables).



When a telemarketer makes an outbound call, a query (in the form of a "TCAP" or "IP" type message) is sent from the originating Telephone Carrier to the SS7/IP network. The SS7/IP network carries the message to the SCP hosting TeleBlock®, where the screening process takes place to determine if the call should be completed or blocked. If the number dialed appears on the chosen do-not-call list(s), the call is not completed, and the caller receives a "restricted number" message. If the number dialed does not appear on the list, then the call is completed as normal.

In short, TeleBlock® is the most advanced technological answer possible to the do-not-call compliance question. TeleBlock® requires no capital investment by the telemarketer in hardware or software, and needs no third-party outside the telephone network to process the telemarketer's outbound calls, because it is now a part of the telecommunications infrastructure of the United States. CCI also offers a range of other products that address compliance needs of telemarketers, including TeleGuide® (do-not-call training and certification), Campaign List Manager(SM) (enabling easy deployment of campaign lists via the TeleBlock® platform), and DialBlock(SM) (TeleBlock® "light" for smaller telemarketing operations - requires log-in via a toll-free number). CCI also offers consumers the ability to add their names to CCI's proprietary TeleStop® (phone), FaxStop(SM) (fax) and CelleStop(SM) (cell phone) lists that CCI makes available to its clients.

To date, CCI has provided the TeleBlock® service to many companies, including a number that had been previously fined by State regulators for do-not-call violations. <u>In over three years, not one of CCI's clients has been fined for a do-not-call violation</u>. CCI has also found that, despite consistent implementation of merging/purging techniques by many of our clients (at considerable cost), a significant percentage of do-not-call numbers are not removed from their prospect lists. These calls are of course blocked, and tracked, by the TeleBlock® service. Therefore, CCI respectfully submits that with increasing acceptance and use of the TeleBlock® service across the teleservices industry, there will be a marked decrease in consumer do-not-call complaints. Before creating new regulatory burdens for telemarketers, the effectiveness of this technology should be reviewed.

With respect to the FCC's request for comments regarding what factors the Commission should consider in deciding whether to rely on a given blocking technology, CCI suggests that the factors should be: availability, effectiveness, reliability, track record, and cost. TeleBlock® meets these criteria in that it is universally available to all telephone carriers via the SS7/IP networks; screens calls in real-time against do-not-call lists requiring no merging/purging by individual telemarketers; offers standard telco industry "five 9's" (99.999%) reliability; has been deployed for over three years with no violations being levied against TeleBlock® clients; and requires no capital expenditure for either carriers or telemarketers.

With respect to the FCC's request for comments on "best practices" and safe harbors, as discussed above, there can be no more effective "best practice" to maintain compliance available to telemarketers other than to block calls using TeleBlock®.

Balance of Interests/Burdens of Company-Specific Do-Not-Call Approach

NPRM, Par. 14: "We now seek comment on the overall effectiveness of the company-specific do-not-call approach in providing consumers with a reasonable means to curb unwanted telephone solicitations. We recognize that some consumers may feel that receiving product and service information by telephone helps them reap the benefits of a competitive marketplace; such consumers may value the savings and convenience that telemarketing often provides. Other consumers may wish to limit, or even stop altogether, the number of telemarketing calls they receive. Given the volume of telemarketing calls, we seek comment on whether the company specific do-not-call approach adequately balances the interests of those consumers who wish to continue receiving telemarketing calls, and of the telemarketers who wish to reach them, against the interests of those who object to such sales calls. . . . We seek comment on whether this approach is unreasonably burdensome for consumers."

NPRM, Par. 52: "We seek comment on any disadvantages to consumers or any other parties to establishing a national do-not-call list . . . ."

CCI's experience indicates that both consumers and telemarketers benefit from the company-specific do-not-call approach, in that individual consumers are able to easily opt-out from receiving calls from specific companies, and in turn, these companies are able to identify consumers who are not interested in their product/service offerings. However, the existence of a free national do-not-call list could have a negative impact on the balance of interests and burdens reflected in the current company-specific scheme.

Should the FCC decide to move forward with the establishment of a national do-not-call list, TCPA Section 227(c)(3) prohibits "any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section." CCI respectfully submits that telemarketing sales statistics, along with the experiences of the states with their do-not-call programs, indicate that many consumers who register with free (no charge to the consumer) do-not-call programs may not fully appreciate the impact that this decision will have on their ability to conveniently purchase many goods and services. Although anecdotal evidence would suggest that consumers are overwhelmingly in favor of do-not-call laws, the fact remains that the teleservices industry generated more than $660 billion in sales in 2001, or about 6% of the Gross Domestic Product -- in 2001 alone, over 185 million American consumers made a purchase as a result of an outbound telemarketing call.[1] It is clear, therefore, that consumers' views on telemarketing are more complex than public opinion polls and anti-telemarketing consumer groups would indicate.

This complexity is illustrated by the registration rates across the states that have implemented do-not-call programs. In those states where there is a charge to consumers to register (and a nominal charge at that), the registration rate averages about five percent of residential phone lines. On the other hand, in those states that offer the list for free, the registration rates can go over 50%. Rather than complete abhorrence of telemarketing calls, this ten-fold disparity points

[1] Source: American Teleservices Association.

instead to widespread consumer ambivalence towards them. In other words, the vast majority of consumers only dislike telephonic solicitations for products or services that they are not interested in at the time of the call. Accordingly, for these consumers, there are the proverbial "annoying telemarketing calls" which they wish to avoid by signing up for a do-not-call list, and then there are well-timed and extremely convenient product/service purchasing opportunities that happen to result from a telephone call. The registration rates establish that 95% of consumers are unwilling to pay even a nominal charge (about $5 per year) to completely stop all telemarketing calls.

Notwithstanding the small percentage of consumers who wish to avoid all such telemarketing calls (as evidenced by their willingness to pay for do-not-call registration), it is clear that the availability of a free list (which poses no barrier to entry) inevitably will attract large numbers of consumers who in fact would otherwise welcome timely telephonic solicitations. Put another way, where a do-not-call list is made available to consumers free of charge, there is no way to confirm that any of the registrants to the list are in fact expressing a genuine desire to stop all telemarketing calls, no matter how well-timed and independent of the consumer's need for the product or service being offered. The current company-specific approach (or, alternatively, a list that charges consumers for registration) helps to avoid this outcome.

A related difficulty with free consumer registration has to do with the integrity of the information on the list itself. A free list opens up opportunities for individuals to register third-parties who may have no interest in being on a do-not-call list, along with business, emergency, and random numbers. The FTC is to be applauded for its recommendation to adopt an ANI-based registration system that would at least confirm that the person attempting to register the number in question is in fact dialing from that number.

Time Frame for Honoring Do-Not-Call Requests

NPRM, Par. 17: "We also ask whether the requirement that companies honor do-not-call requests for ten years is a reasonable length of time for consumers and telemarketers."

CCI respectfully submits that the ten-year requirement for honoring do-not-call requests is excessive, given the realities of our highly mobile society. As the FCC itself has noted, nearly one-fifth of all telephone numbers change in any given year (NPRM, par. 51) due to a variety of reasons, including disconnection, relocation, and changes of heads of households. The longer do-not-call information is required to be honored, the higher the percentage of obsolete information on the do-not-call list (at least until a national disconnect database becomes available.) The FCC clearly is considering a shorter retention period in the context of a national list (NPRM, par. 49), and CCI therefore respectfully submits that the time frame for honoring any do-not-call request should be a maximum of 18 months.