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December 9,2002

Kellie Farmer
Federal Communications Commission
Room 4-C740
445 12th Street, S.W.
Washingon, DC 20554

Re: Comments Proposed Revisions To TCPA Regulations

CG Docket No. 02-278
CC Docket No. 92-90

Dear Sirs:

American General Finance, Inc. (AGF) offers the following comments in response to the FCC's notice of proposed rulemaking concerning the regulations issued under the Telephone Consumer Privacy Act (TCPA).

1. The definition of "Automatic Telephone Dialing System" should be clarified.

The definition of "automatic telephone dialing system" and "autodialer" in 47 CFR 64.1200(f)(2) focuses on equipment that has the capacity to generate random number and sequential number dialing patters, rather than whether the equipment is actually used in that fashion. AGF believes that the FCC should clarify the definition by regulation to focus on automated dialers are, in fact, used to generate random or sequential phone numbers rather than according to what capacities the equipment has.

2. Prohibition Against Calls To Cellular Phones

The prohibition against calls to cellular phones should he limited to solicitation calls and revised to contain clear exemptions for callers with existing business relationships with the consumers and for consumers who either have only cellular phone service or who provide their cellular numbers to the calling entity.

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Solicitation Calls. The Regulation prohibits all calls, not just solicitation calls, made with automated dialing systems that are made to cellular phone numbers or other services where the party called is charged for the call. This prohibition should be limited to solicitation calls.

Cellular prices have fallen dramatically since 1991. The incremental cost of receiving a cellular call is, depending on the service provider and rate plan applicable, in many cases not significantly different from receiving a non-cellular call. The blanket protection sought to be provided to consumers in 1991 against all calls that result in charges is no longer needed due to changes in the phone service market. While solicitation calls are still a nuisance and system capacity perhaps still too limited to accommodate large volumes of solicitation calls, the blanket, across-the-board protection adopted in 1991 is no longer needed or justified. Limiting this prohibition to solicitation calls would represent a reasonable updating of the regulation to reflect the current market conditions.

Existing Business Relationship Exemption. In lieu of the foregoing, an exemption should be considered for those with existing business relationships with consumers, such as creditors. Such entities have legitimate needs (other than solicitation) to contact consumers and to contact them on cellular phones. Many customers today only have cellular phones – something that was unheard of in 1991. Under the current regulation, for such consumers, the companies with which they do business must either refrain from calling the consumer altogether (because the business uses automated dialing equipment) or must handle all such calls on manually-dialed equipment – something that is cost-prohibitive today. The adoption of an "existing business relationship" exemption from this prohibition would cure that anomaly.

Cellular-Only and Other Consensual Calls. Lastly, in lieu of or as a complement to the foregoing, the regulation should be revised to provide an exemption for consumers who only have cellular phone service or who provide the calling entity with their cellular number(s). The purpose of the regulation was not to prohibit businesses from calling consumers. It was to prohibit businesses from causing undesired expense to consumers by utilizing calls to cellular or other services that charge for received calls. Consumers who only have cellular service clearly have chosen to accept the expense attendant to such service (and many have rate plans that rival or are cheaper than comparable line service). They have, in essence, consented to such calls by eliminating the possibility of any other. Similarly, consumers who provide their cellular phone numbers to business entities clearly have consented to the business's calling them on that number. Additionally, companies have no way of excluding cellular numbers for consumers who provide those numbers as their primary or contact numbers. An exemption covering these two situations would appear to be consistent with the statutory and regulatory objectives.

3. National Do Not Call List

The FCC requested comment on whether a national Do-Not-Call list should be developed instead of current, company-specific do-not-call lists. While a national list would conceptually provide operational simplicity and would certainly be preferable to

proliferating state lists, any such list would have to be operationally compatible with numerous types of telephone and computer systems in order to deliver that simplicity. Experience with state lists to date in that regard is not favorable and frequently involves considerable manual intervention and considerable expense. If such a list were to be developed, **AGF** would strongly recommend that its creation and maintenance be out-sourced.

Additionally, a national list would only be a benefit if it superceded and preempted all existing and any future state lists. Otherwise, a national list would only add an additional burden and considerable expense and add another layer of confusion and difficulty for both consumers and businesses. Until such time as an effective and usable national list could be developed, the current system of company-specific lists should be maintained.

The FCC also requested comment on whether the exemption for companies with "established business relationships" should be modified in the event that a national do-not-call list were developed. We do not believe that any modification to the exemption is or should be made. The considerations relative to both consumers and businesses and the exemption are not affected by a national list.

Additionally, modification of the "established business relationship" exemption to apply only to one type of product or service while prohibiting calls relating to other products or services would be excessively cumbersome and lead to endless debates and/or litigation over definitions of products (financial services vs. loans vs. annuities vs. insurance) that would serve no useful purpose.

Maintenance Of Do Not Call Requests

Under the current regulation, a consumer's request for inclusion on a do-not-call list is valid for ten years. That is too long given the mobility of the population, the frequent changing of local service providers and phone numbers, and the conversion to cellular phones. Five years would be far more reasonable. Even if a five-year standard were adopted, the regulation should be revised to allow for deletions from the list in the event that the consumer changes residence, changes phone number(s) or local service provider, or the phone number is reassigned to another individual. None of these are taken into account in the current regulation.

Additionally, it is not clear whether the do-not-call request applies to the individual, to the phone number, or to the individual and the number. This should be clarified.

Predictive Dialers

Predictive Dialers are essential to many telemarketing, credit, and collections-oriented businesses. They greatly facilitate cost reduction by predicting when a solicitor or collector will most likely be available and dial calls in order to minimize off-line (non-productive) time. Unfortunately, a necessary side effect of that process is that the dialers' predictions are sometimes wrong which results in calls terminated by the caller's

equipment after a consumer answers the call because a solicitor or collector is not available.

The speed of predictive dialers can be regulated. Regulating that speed controls the availability of solicitors and, therefore, the rate of hang-ups generated. AGF notes that there would be considerable difficulty in fashioning operating standards for the use of predictive dialers that are workable while not mandating absolute perfection (no hang-ups required). AGF suggests that requiring users of predictive dialers to achieve a cancellation rate of less than 5% might provide some needed direction.

AGF would also like to note, however, that if predictive dialers were either prohibited or their speed regulated so as to virtually eliminate all hang-ups, the number of solicitors and/or collectors required for any given amount of work could as much as triple – a not inconsiderable expense.

It should also be noted that predictive dialers enable their users to place consumers on a do-not-call list instantaneously and effective with the next few days' business.

Confirmation and Processing Of Do-Not-Call Requests

Confirmation. The FCC has inquired whether it should require companies to provide some affirmative confirmation that do-not-call requests have been processed. On the surface, this may sound appealing. In practice, it will accomplish two things: it will increase the costs of maintaining do-not-call lists dramatically and/or it will require consumers to provide additional marketing information (address and/or email address) that will most assuredly be used by some for other types of unsolicited direct marketing. Neither of these outcomes will further the purposes of the TCPA nor enhance consumer privacy.

Processing. Those who operate most efficiently can and do place consumers on do-not-call lists as soon as possible – often the same day the requests are made or effective on the following business day. There are, however, operations of all sizes and levels of sophistication subject to the regulations. Setting a time period within which requests must be processed must necessarily be set to allow even the least sophisticated entity to comply. If a time period is to be set, 30 days would not appear to be unreasonable.

Caller ID Requirements

AGF supports requiring telemarketers to transmit the Calling Party Number (CPN) and company name and to prohibit the blocking or altering of the transmission of such information. AGF does not believe that concealing a telemarketer's identity serves any legitimate purpose and requiring the transmission of CPN and company name would enable consumers who receive 'hang-up' calls from entities using predictive dialers to ascertain the identity and contact number of the calling entity – both of which should reduce or eliminate any anxiety caused by the hang-up calls.

AGF believes that the FCC should note that merely providing CPN and company ID does not ensure that all consumers will receive that information. A number of local phone companies do not transmit that information with all calls. AGF believes that they should be required to do *so.*

Time Of Day Restrictions

The FCC has requested comments on whether its time of day restrictions (8:00 am to 9:00 pm) should be revised. American General Finance supports the FTC's position that those hours are reasonable and that consistency among the various federal regulations that govern telemarketing is of critical importance.

Preemption of State Laws

The need and desire for preemption of state telemarketing laws is dependent upon the number of conflicting state laws adopted. Most telemarketers operate on a regional or national basis. It is feasible to deal with several sets of applicable rules and standards, however, the more states adopt conflicting or inconsistent state laws and regulations, the more difficult compliance becomes and the greater the need for federal preemption.

The current level of state regulation of telemarketing is not unduly burdensome, but is on the verge of becoming so. Should any additional states pass laws dealing with the same aspects of telemarketing as the FCC rule, American General Finance would suggest that federal preemption should be adopted to the extent permissible under the TCPA.

AGF appreciates the opportunity to comment on the FCC's proposed revision of the TCPA regulations.

Very truly yours,

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Assistant General Counsel