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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, D.C. 20554

Re: Docket **No. 02-278** and the Social Costs **of FCC** Regulation of the Teleservices Industry

Dear Chairman Powell:

I am writing on behalf of the American Teleservices Association ("ATA") to supplement comments filed in response to *Implementation* of ***the*** *Telephone Consumer Protection Act of 1991,* Docket No. 02-278, 17 FCC Rcd 17459 (2002) *("TCPA NPRM')*. In this proceeding, the Commission is exploring the possibility of adopting new rules governing telemarketing to supplement regulations first promulgated in 1991. In this regard, the TCPA provides that "individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in such a way that protects privacy of individuals *and permits legitimate telemarketing actiuities."* NPRM ¶ 1, quoting Section 2(9), Pub. L. No. 102-243 (emphasis added).

The statutory requirement that the Commission must strike a balance in this proceeding gains heightened importance in the wake of the Office of Management and Budget's ("OMB') recently released 2002 Report to Congress on the Costs and Benefits of Regulations ("Report"). The OMB Report, which focuses attention on the impact of various federal regulatory programs, includes a discussion of some FCC initiatives undertaken in 2002. *See* Tables 10, 11 and 15. OMB has already begun to prepare its 2003 Report, and ATA believes that OMB likely will take into account the potential adverse impact of the telemarketing regulations the FCC is considering, along with the FTC's recent revisions to the Telemarketing Sales Rule ("TSR") adopted under the Telemarketing and Consumer Fraud and Abuse Prevention Act ("TCFAPA')).

New regulations by the FCC and FTC would have a significant adverse effect on legitimate telemarketing efforts. Telemarketing contributed approximately $661 billion to the national economy last year, and accounted for more than 5.4 million jobs nationwide. Particularly now, with an economy in recovery, telemarketing is a source of much-needed jobs, particularly for women, working mothers and individuals who wish or need to work from home. In West Virginia, for example, telemarketing provides more employment than does the coal mining industry, and it has been cited as a success story in that state's "guaranteed work force program." Prior to the FTC's adoption of TSR revisions and the FCC's consideration of new rules, telemarketing was projected to contribute over $990 billion to the economy by 2006. The actual contribution, however, could fall well short of that mark once the new FTC rules go into effect and if the FCC adopts new rules as well.

The negative economic impact was foreshadowed during the FTC press conference on December 18, 2002 to announce that agency's adoption of revisions to the TSR. FTC Chairman Timothy Muris stated that the FTC's new rules, coupled with similar rules if and when adopted by the FCC, would subject eighty percent of the telemarketing industry to significant new restrictions. The FTC has estimated that as many as sixty percent of all households nationwide could be removed from the telemarketing marketplace as a result of these regulations, a reality that holds devastating implications for a key segment of the American economy. Such regulation by the FTC and FCC would duplicate regulation of telemarketing that has been adopted in most states. In this regard, the Commission should take note that state regulations have had a dramatic impact on sales made through telemarketing. For example, in its comments to the FCC, MBNA America Bank, N.A., reported a 50 ***percent*** decline in telemarketing sales in states that have "do not call" list requirements. If such effects are projected nationally, the impact will be devastating.

For a variety of statutory, constitutional and policy reasons that are explained in its comments, ATA urges the FCC to reject the proposal to adopt a national "do not call" database. In the process of doing so, the Commission should take a careful look at the real economic and human costs of any new telemarketing rule. Such an assessment is necessary for the

Commission to fulfill its TCPA obligations, and is further supported by the OMB's mandate to assess fully the costs and benefits of regulation.

Sincerely,

Robert Corn-Revere

Robert Corn-Revere
Counsel for the American
Teleservices Association

cc: Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
K. Dane Snowden