



January 3, 2002

CC Docket No. 02-278

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Ms. Salas.

This is in response to the Federal Communication Commission's (the FCC) request for comment regarding the Telemarketing Sales Rule, specifically the Do Not Call Registry, and to various comments received by the FCC in response to the request for comment.

MidFirst Bank, a federal savings association in Oklahoma City, is sensitive to many issues raised and objectives pursued by the FCC in its Notice of Proposed Rulemaking, by the Federal Trade Commission (FTC) in its proposed rule, and by various state legislatures with their Do Not Call lists. Given the concern voiced by the American public regarding telemarketing as is evidenced by the large number of responses received by the FCC from concerned citizens, Do Not Call Registries are an option worthy of consideration; however, establishing and enforcing any Do Not Call list must be carefully implemented if it is to efficiently achieve the desired objective. While many consumers have been offended by telemarketing, it is also accurate to conclude that telemarketing has provided benefits to others; the difficulty is in identifying the middle ground whereby the most individuals in both groups will be satisfied while considering the business aspect - and impact - of any such rule on legitimate companies engaged in telemarketing.

Should the FCC pursue the Do Not Call Registry concept, MidFirst specifically opines on the following:

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- Federal preemption should be granted to any entity that is subject to the telemarketing restrictions contained in either the FCC's or the FTC's proposed rule. The number of states restricting telemarketing activity imposes significant costs and compliance burdens on companies engaging in telemarketing activities either for themselves or for third parties. Obtaining a comprehensive list of all state and federal laws regarding Do Not Call programs can be difficult, and once all such laws are identified, a company must determine if its telemarketing operations are subject to each law's scopes, definitions, exceptions, exemptions, restrictions, and so forth and then develop policy and training methods to comply with this hodge-podge of varying rules. As the ultimate objective is to provide the consumer with the power to control the receipt of telemarketing calls, it is reasonable to conclude that a single law applicable to all entities would more effectively achieve the objective. The current system of multiple laws promotes errors, confusion, dissatisfaction, and unnecessary expense for telemarketers, the business community, the American consumer, and the government. A single combined FCC and FTC database affording federal preemption is the best option. Without federal preemption, such a list, whether imposed by the FCC, the FTC or both, would be yet another list with which companies would need to comply thereby increasing costs and compliance burden.
- Recognizing that the cost of telemarketing operations will ultimately be absorbed in whole or in part by consumers, MidFirst opines that the lack of federal preemption will place an inordinately expensive and duplicitous burden on companies performing telemarketing and the consuming public. Requiring an entity to maintain, update, and enforce a single Do Not Call Registry is inherently more effective and efficient for all parties involved. A single list will also more likely result in more effective cessation of telemarketing contacts to customers on that one list. Many state legislatures seem to agree with this single list concept as they have deferred the maintenance of such a registry to the Direct Marketing Association. Such a single, federal list would also improve consumer protection as there would be reduced possibility of a company avoiding the telemarketing restrictions based on geographic location.
- MidFirst opposes any attempt to significantly restrict the "existing business relationship" concept. Once a customer has purchased a product or service from a company or has opened an account with a company, that company should be able to contact the customer regarding other products, services, or accounts that have been identified as potentially beneficial to the customer based on that shared relationship. The interaction between the individual customer and the company should control how and for what purposes the company contacts the customer; the customer has significant power to control this relationship since the customer can select a different provider of products or services. It is reasonable to expect most companies to abide by customer requests for reduced contact since the company would expect the customer to either terminate the existing relationship or to not purchase an additional product both of which are negatives to the company.
- MidFirst suggests that the "existing business relationship" concept should have a specific termination date. MidFirst also requests that the final rule incorporate the differences between a one-time product or service purchase (as in buying a car or in having a house painted) and the purchase of an ongoing service (as in opening a savings account or obtaining a loan.) MidFirst would suggest the "existing business

relationship” be terminated no earlier than a period of 12 months following the last purchase of a product or service and no earlier than 60 days following the closure of all accounts with a company.

- MidFirst also requests clarification as to the effect any final rule would have on a telemarketer’s activities when that telemarketer has been engaged by a company. The final rule may allow certain exceptions or exemptions for particular activities or for particular industries. In such cases, the final rule should clearly explain when such exceptions or exemptions will extend to a third party telemarketer engaged by and acting as the agent of a company. **If** the company can engage in an activity directly, it is certainly reasonable for the company to engage a third party telemarketer to perform that activity.

MidFirst appreciates the opportunity to outline the above ideas and supports a review of this important public interest issue. If additional information is needed, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles R. Lee". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles R. Lee
Vice President and
Director of Bank Administration
MidFirst **Bank**