

**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
	)	

**BELLSOUTH REPLY COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly owned affiliated companies (“BellSouth”), submits the following reply comments in response to the Consumer and Governmental Affairs Bureau’s recent *Notice of Proposed Rulemaking* in the above referenced proceeding.<sup>1</sup>

**I. Introduction**

The *Notice* elicited comments from a wide variety of entities, including individual consumers and consumer advocates, telecommunications carriers, telemarketing firms and vendors, governmental bodies and others. The subject matter is obviously of interest to all consumers and many types of businesses. This is not surprising in light of the economic impact of the telemarketing industry and the significant number of consumer complaints generated by telemarketing practices.

---

<sup>1</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 02-250 (rel. Sept. 18, 2002) (“*Notice*”).

The Commission sought comment on whether the rules it adopted to implement the Telephone Consumer Protection Act (“TCPA” or “Act”)<sup>2</sup> needed to be revised in order to “more effectively carry out Congress’s directives in the TCPA.”<sup>3</sup> BellSouth shares the Commission’s interest in protecting consumers from telemarketing abuses, but, as stated in its comments, does not see the need to replace or drastically revise the existing rules. The current rules are sufficient to protect consumers if they are adequately enforced.

Most, if not all, of the commenters expressed an opinion on the Commission’s proposal to revisit the option of establishing a national “Do Not Call” (“DNC”) list. For reasons set forth below and in its comments, BellSouth opposes the establishment of such a list.

## **II. A National Do Not Call List Is Not Necessary and Would Be Difficult and Costly to Administer**

The current *Notice* represents the Commission’s second look at the feasibility and advisability of implementing a national DNC list. The TCPA required the Commission to initiate a rulemaking proceeding to develop regulations to carry out the goals of the Act; that proceeding was to include, among other things, an evaluation of various methods for protecting the privacy rights of residential telephone subscribers.<sup>4</sup> One such method permitted by the Act was the establishment of a national DNC list, and the Act further specified certain provisions to be included in any rule requiring the establishment

---

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> *Notice*, ¶ 1.

<sup>4</sup> 47 U.S.C. § 227(c)(1)(A).

of such a list.<sup>5</sup> After considering the input of approximately 240 parties who filed comments or replies in the proceeding, the Commission released its *Report and Order*<sup>6</sup> in October of 1992. Citing implementation costs, probable difficulties in maintaining an accurate list, the difficulty of protecting telemarketer proprietary information, and consumer privacy concerns, the Commission concluded that the disadvantages of a national DNC list outweighed its advantages,<sup>7</sup> and opted instead to require company-specific DNC lists.<sup>8</sup> The reasons for rejection of the national DNC list in 1992 are equally applicable today.

As BellSouth pointed out in its comments, and as the Commission recognized in 1992, the potential costs of developing and administering such a list are enormous. Some of those costs will be borne by entities that are not the causers of the abuses that the Act is intended to eliminate. As the Commission acknowledged in the *Notice*,<sup>9</sup> the Act contemplates that local exchange providers would be responsible for informing subscribers of the existence of the list and the mechanism for getting their names added to and removed from the list,<sup>10</sup> and for notifying telemarketers of the regulations and requirements relating to the list.<sup>11</sup> Whatever method is used to make the notifications, these obligations will place financial burdens directly on the carriers and would have immediate impact on their subscribers. Direct costs would be incurred for personnel and

---

<sup>5</sup> 47 U.S.C. § 227(c)(3).

<sup>6</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, *Report and Order*, 7 FCC Rcd 8752 (1992) (“*Report and Order*”).

<sup>7</sup> *Id.* at 8760-61, ¶¶ 14-15.

<sup>8</sup> *Id.* at 8763-67, ¶¶ 20-24.

<sup>9</sup> *Notice*, ¶ 53.

<sup>10</sup> 47 U.S.C. § 227(c)(3)(B), (C).

for developing or modifying databases to accommodate this function. Further, the additional time required for service representatives to make verbal disclosures, answer customer inquiries, and attempt to dispel the inevitable customer confusion will add to customer "on hold" time, delay the handling of the customer's business transaction, increase customer frustration and result in more customer complaints and inquiries to the regulatory agencies.

The administrative burdens associated with maintaining an accurate list and adequately protecting customer privacy and confidential information are still as great today as when they were first contemplated by the Commission in 1992. Advances in technology may have simplified the mechanics of maintaining an enormous database, but have by no means eliminated the tremendous potential expense that would be involved in developing and maintaining it.

The company-specific DNC lists offer several advantages as a means of eliminating unwanted telemarketing calls. Those enumerated by the Commission when it chose to implement this requirement include: (1) such lists were already maintained by many telemarketers; (2) they allow subscribers to selectively limit telemarketing calls; (3) they allow businesses to gain useful information about customer preferences; (4) they protect consumer confidentiality because the lists would not be universally accessible; and (5) they impose the costs of protecting consumers on telemarketers rather than on carriers or consumers.<sup>12</sup> These advantages are still valid today. The imposition of a national DNC list would provide no advantages over and above those provided by the

---

<sup>11</sup> 47 U.S.C. § 227(c)(3)(L).

<sup>12</sup> *Report and Order*, 7 FCC Rcd at 8765-66, ¶ 23.

company-specific lists, and would have a number of disadvantages, including those discussed above and in BellSouth's comments. Stricter enforcement of existing rules and increased penalties for violators can accomplish the Commission's goals without adding an additional layer of regulation such as would be imposed by the implementation of a national DNC list. The increased number of telemarketing complaints that the Commission cites in the *Notice* may be addressed through enforcement of current rules, and do not justify establishing a national DNC list, which offers no advantages – and indeed presents several disadvantages – over the current company-specific DNC lists.

### **III. A National Do Not Call List, If Implemented, Must Be Subject to Certain Limitations**

As explained above and in its comments, BellSouth opposes the implementation of a national DNC list. However, if the Commission should determine that such a list is necessary to carry out the goals of the TCPA, BellSouth offers further recommendations below.

The *Notice* discusses the proposed FTC DNC list and the potential interplay between such a list and one that might be implemented by this Commission. The costs and implementation problems involved in administering two national lists will undoubtedly outweigh any possible advantages. BellSouth urges a coordination of effort between these two agencies to ensure that only one national DNC list is implemented. This will minimize the burdens on consumers who seek to have their names placed on the list and on telemarketers who must obtain access to the list in order to ensure that their marketing efforts are in compliance with the law.

Further, if a national list is implemented, it should be structured so that companies who market in limited geographic areas may access only the portions of the list that include potential customers in their areas. If the list is accessed by downloading it into a company's existing database, this limitation would lessen the impact on the company's computer resources; in any event, a company should not be required to obtain segments of the list that are not relevant to the conduct of its business, and the cost to such company of obtaining only a portion of the list should be reduced proportionately. Such a limitation is consistent with the language of the Act, which provides that, in developing procedures for gaining access to a national DNC database, the Commission shall "consider the different needs of telemarketers conducting business on a national, regional, State, or local level,"<sup>13</sup> and provides that regulations requiring the establishment of a DNC list are to include provisions for "mak[ing] that compiled list *and parts thereof* available for purchase."<sup>14</sup>

The Commission should clarify that, as provided in the Act,<sup>15</sup> a national DNC list would include only residential telephone subscribers. The TCPA, as its name implies, has as its primary focus the protection of consumers from various abuses specified in the statute. The additional administrative burdens of allowing businesses to be included on a national DNC list would make the implementation process unworkable. In any event, businesses expect to receive calls, and sales solicitations do not present the same threat to privacy that is perceived by consumers. Indeed, any attempt to apply a DNC list to

---

<sup>13</sup> 47 U.S.C. § 227(c)(4).

<sup>14</sup> 47 U.S.C. § 227(c)(3) (emphasis added).

businesses would exceed the Commission's jurisdiction and impede companies' first amendment rights.

It is imperative that the Commission not burden LECs with the cost of establishment, or consumer notification, of a national DNC list. Those costs must be shared among the telemarketing industry. Moreover, because such costs will be significant, the rules should allow the entities to make the notification in the most efficient and economical manner available. Carriers' responsibilities should be limited to those functions specified in the Act.

#### **IV. Conclusion**

The Commission should focus its attention on stricter enforcement of its existing rules, rather than adopting new ones. In particular, a national DNC list is not needed, and would be costly and administratively burdensome to administer. Whatever course the Commission determines is appropriate, the primary financial burden of implementing the rules should be borne by the entities that cause the abuses that the rules are intended to

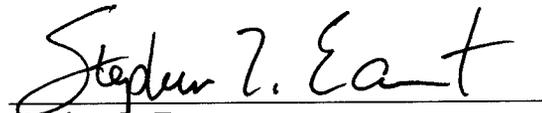
---

<sup>15</sup> "The regulations . . . may require the establishment and operation of a single national database to compile a list of telephone numbers of *residential* subscribers who object to receiving telephone solicitations . . ." *Id.* (emphasis added).

stop. In no event should local exchange carriers be required to bear the financial burden of fixing a problem that they did not cause.

Respectfully submitted,

BELLSOUTH CORPORATION

A handwritten signature in black ink that reads "Stephen L. Earnest". The signature is written in a cursive style and is positioned above a horizontal line.

Stephen L. Earnest  
Richard M. Sbaratta

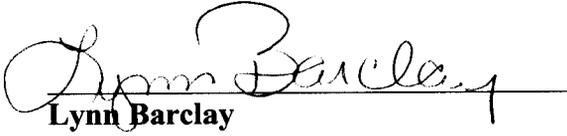
Their Attorneys

Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0711

Date: January 31, 2003

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 31<sup>st</sup> day of January 2003 served the parties of record to this action with a copy of the foregoing **BELLSOUTH'S REPLY COMMENTS** by Electronic Mail and U.S. Mail addressed to the parties listed on the attached service list.

  
Lynn Barclay

Service List CC Docket No. 02-278

Dave Robinson  
TSI Telecommunications Services, Inc  
Suite 700  
201 North Franklin Street  
Tampa, FL 33602

Ronald G. London  
Teleservices Association Hogan & Hartson  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D. C. 20004-1109

Robert Corn-Revere  
Ronald G. London  
American Teleservices Association  
Hogan & Hartson LLP  
555 Thirteen Street, N.W.  
Washington, D. C. 20004-1109

Claude L. Stout  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910-3803

Paul O. Gagnier  
Ulises R. Pin  
Telecommunications for the Deaf  
Swindler Berlin Shereef Friedman, LLP  
3000 K Street, N. W., Suite 300  
Washington, D. C. 20007

Technion Communications Corporation  
1360 North University Drive, Suite 100  
Plantation, Florida 33322

Frank J. Uddo  
Mark C. Carver  
City of New Orleans  
Uddo, Milazzo & Beatmann  
3850 N. Causeway Boulevard, Suite 1510  
Metairie, Louisiana 70002

William D. Aaron, Jr.  
City of New Orleans  
Goins Aaron, PLC  
1010 Common Street, Suite 2600  
New Orleans, Louisiana 70112

Arthur H. Saxon  
TeleSTAR Marketing  
106 Chesley Drive  
Media, PA 19063

J. Stephen Zielezienski  
Kenneth A. Stoller  
1130 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D. C. 20036

Dr. Jennifer L. Howse  
March of Dimes  
1275 Mamaroneck Avenue  
White Plains, NY 10605

David R. Straus  
American Business Media  
Thompson Coburn LLP  
1909 K Street, NW, Suite 600  
Washington, D. C. 20006

Brad Totten  
795 Oak Path Court  
Oak Park, CA 91377

Kimberley A. Hunter-Turner  
Cendant Corporation  
101 Constitution Avenue, N. W.  
Suite 800  
Washington, D. C. 20001

Karen M. Coppa  
City of Chicago  
Suite 900  
30 North LaSalle Street  
Chicago, Illinois 60602-2580

Douglas M. McKenna  
Mathemaesthetics, In.  
P. O. Box 298  
Boulder, CO 80306-0298

Martha Jenkins  
Director Regulatory Affairs  
Intrado Inc.  
1225 I Street, NW #500  
Washington, DC 20005

J. Melville Capps  
P. O. Box 124  
Vista, CA 92085

Kathleen Thuner  
National Association of Consumer  
Agency Administrations  
1010 Vermont Avenue, N.W.  
Suite 514  
Washington, D. C. 20005

David A. Winston  
Vice President-Government Affairs  
NAIFA  
2901 Telestar Court  
Falls Church, VA 22042-1205

James Bradford Ramsay  
National Association of Regulatory  
Utility Commissioners  
1101 Vermont Avenue, NW  
Suite 200  
Washington, D. C. 20005

Craig G. Goodman  
National Energy Marketers Association  
3333 K Street, N. W., Suite 425  
Washington, D. C. 20007

Glenn A. Mitchell  
Andrew M. Beato  
The Not-For Profit and  
Charitable Coalition  
Stein, Mitchell & Mezines LLP  
1100 Connecticut Avenue, NW  
Washington, DC 20036

L. Marie Guillory  
Jill Canfield  
National Telecommunications  
Cooperative Association  
4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203-1801

May M. Chao, James. Warden, Jr.  
Lisa R. Harris, Seth R. Lamont  
New York State Consumer Protection Board  
5 Empire State Plaza, Suite 2101  
Albany, New York 12223-1556

Carl E. Mergele  
SER Solutions, Inc.  
Loudun Tech Center  
21580 Ridgetop Circle  
Dubess, VA 20166

Eric G. Rizzo  
Farmers Group, Inc.  
Director of Federal Affairs  
1201 F Street, N. W., Suite 250  
Washington, D. C. 20004

Raymond L. Gifford  
Polly Page, Jim Dyer  
Public Utilities Commission  
State of Colorado  
1580 Logan Street, OL2  
Denver, CO 80203

Rebecca Klein  
Brett A. Perlman  
Julie C. Parsley  
Public Utility Commission of Texas  
P. O. Box 13326  
Austin, Texas 78711-3326

James t. McIntyre  
McIntyre Law Firm, PLLC  
1155 15<sup>th</sup> Street, N. W.  
Suite 1101  
Washington, D. C. 20005

Kathryn D. Kohler  
Bank of America  
Legal Department  
NC1-002-29-01  
101 South Tryon Street  
Charlotte, NC 28255

Nessa Eileen Feddis  
American Bankers Association  
1120 Connecticut Avenue, NW  
Washington, DC 20036

Maureen Trimm  
ACUTA  
152 West Zandale Drive  
Suite 200  
Lexington, KY 40503

Joan M. Schmidt  
ACHO-I  
941 Chatham Lane, Suite 318  
Columbus, OH 43221

Alexander Szlam  
5051 Peachtree Corners Circle  
Norcross, GA

Robert Corn-Revere  
Ronald G. London  
C. Jeffrey Tibbels  
American Teleservices Association  
Hogan & Hartson LLP  
555 13th Street, N.W.  
Washington, D. C. 20004

Marci Greenstein  
Donald Elardo  
Concerned Telephone Companies  
Kraskin, Lesse & Cosson  
2120 L Street, NW, Suite 520  
Washington, DC 20037

Dennis C. Brown  
126/B North Bedford Street  
Arlington, Virginia 22201

John W. Hesse, II  
Joseph N. Mariano, John Webb  
Direct Selling Association  
1275 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20004-2411

Elissa Matulis Myers, CAE  
Electronic Retailing Association  
2101 Wilson Boulevard, Suite 1002  
Arlington, VA 22201

Linda A. Goldstein  
William M. Heberer  
Electronic Retailing Association  
Hall Dickler Kent Goldstein & Wood LLP  
909 Third Avenue  
New York, New York 10022

John F. Schiff  
21030 Burton Street  
Canoga Park, CA 91304

John A. Shaw  
374 Cromwell Drive  
Rochester, NY 14610

Maury S. Kauffman  
The Kaufman Group Inc.  
6120 N Camino Esquina  
Tucson, AZ 85718-3709

Ronald N. Zebeck  
Metris Companies, Inc.  
10900 Wayzata Boulevard  
Minnesota, MN 55305

Henry L. Baumann  
Jack N, Goodman, Ann W. Bobeck  
National Association of Broadcasters  
1771 N Street, N. W.  
Washington, D. C. 20036

Robert S. Tongren  
Terry L. Etter, David C. Bergmann  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

NASUCA  
8300 Colesville Road  
Suite 101  
Silver Spring, MD 20910

Susan Grant  
National Consumers League  
1701 K Street N.W., Suite 1200  
Washington, DC 20006

W. Thomas Hagy  
Newsletter & Electronic Publishers  
Association  
1501 Wilson Boulevard, Suite 509  
Arlington, Virginia 22209

Neal A. Jackson  
Dana Davis Rehm  
Gregory A. Lewis  
National Public Radio, Inc.  
635 Massachusetts Avenue, NW  
Washington, D. C. 20001

Elizabeth A. Noel, Sandra M. Frye,  
Barbara L. Burton, Brenda Pennington,  
Joy M. Ragsdale  
Office of the People's Counsel  
For the District of Columbia  
1133 15<sup>th</sup> Street, NW Suite 500  
Washington, D. C. 20005-2710

Jodi J. Bair  
The Public Utilities Commission  
Of Ohio  
Public Utilities Section  
180 E. Broad Street, 9th Floor  
Columbus, OH 43215

Samuel E. Whitley  
Attorney at Law  
7000 Westview Drive # 502  
Houston, Texas 77055-6967

Andrew D. Lipman  
Grace R. Chiu  
Telatron Marketing Group, Inc.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N. W., Suite 300  
Washington, D. C. 20007-5116

Amy Healy  
Director Public Policy  
Yellow Pages Integrated Media  
Two Connell Drive, First Floor  
Berkely Heights, NJ 07922

Joel Bernstein  
Halprin Temple  
555 12<sup>th</sup> Street, N. W.  
Suite 950 N  
Washington, D. C. 20004

Suzanne Toller  
AT&T Wireless Services, Inc.  
Davis Wright Tremaine LLP  
One Embarcadero Center, Suite 600  
San Francisco, CA 94111

Douglas I. Brandon  
Vice President- Legal and External Affairs  
AT&T Wireless Services, Inc.  
1150 Connecticut Avenue, N. W., 4<sup>th</sup> Floor  
Washington, D. C. 20036

Tom W. Davidson  
Natalie G. Roisman  
Brunswick Corporation  
Akin Gump Strauss Hauer & Feld LLP  
1676 International Drive  
Penthouse  
McLean, Virginia 22102

Call Compliance  
90 Pratt Oval  
Glen Cove, New York 11542

J. R. Carbonell  
Carol L. Tacker  
David Richards  
Cingular Wireless LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, Georgia 30342

Joe Waz  
Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102-2148

Peter C. Cassat  
Comcast Corporation  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, NW  
Washington, D. C. 20036-6802

William H. Hawkins, II  
Convergys Corporation  
201 East Fourth Street  
102-2030  
Cincinnati, Ohio 45230

Gary M. Epstein  
James H. Barker  
William S. Carnell  
DIRECTV, Inc.  
Latham & Watkins  
555 Eleventh Street, N. W.  
Suite 1000  
Washington, DC 20004-2505

David A. Irwin, Loretta J. Garcia  
Gregory V. Haledian  
Globecom Systems, Inc.  
Irwin, Campbell & Tannenwald, PC  
1730 Rhode Island Avenue, N. W.  
Suite 200  
Washington, D.C. 20036

Michelle C. Farquhar  
David L. Martin  
LCC International, Inc.  
Hogan & Hartson LLP  
555 13th Street, N. W.  
Washington, D. C. 20004

Kurt Pfothauer  
Mortgage Bankers Association  
of America  
1919 Pennsylvania Avenue, N.W.  
Washington, DC 20006

David A. Irwin  
Loretta J. Garcia  
Gregory V. Haledjian  
Moultrie Independent Telephone Company  
1730 Rhode Island Avenue, N. W., Suite 200  
Washington, D. C. 20036

John F. Sturm  
David S. J. Brown  
E. Moly Hemsley  
Newspaper Association of America  
529 14<sup>th</sup> Street, N. W., Suite 440  
Washington, D. C. 20045

John F. Kamp  
Amy E. Worlton  
Newspaper Association of America  
Wiley Rein & Fielding LLP  
1776 K Street, N. W.  
Washington, D. C. 20006

Dick Bottorff  
Mary Ambler Lany  
NCS Pearson, Inc.  
5601 Green Valley Drive  
Bloomington, Minnesota 55437

Stefan M. Lopatkiewicz  
Tania W. Hanna  
NCS Pearson, Inc.  
Dorsey & Whitney LLP  
1001 Pennsylvania Avenue, N. W.  
Suite 400  
Washington, D. C. 20004

Kimberly Wheeler Miller  
NeuStar, Inc.  
1120 Vermont Avenue, N.W.  
Suite 400  
Washington, D. C. 20005

Robert McNamara  
Nextel Communications, Inc.  
20001 Edmund Halley Drive  
Reston, Va 20191

To-Quyen T. Truong  
Scott D. Dillard  
Briana E. Thibeau  
Nextel Communications, Inc.  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D. C. 20036

James W. Harper  
Privacilla.Org  
P. O. Box 77576  
Washington, D. C. 20013

Sharon J. Devine  
Kathryn Marie Krause  
Qwest Services Corporation  
Suite 700  
1020 19th Street, NW.  
Washington, D. C. 20036

Steven Manzo  
Ronald L. Plesser  
Reed Elsevier Inc.  
1200 19<sup>th</sup> Street N. W.  
Washington, D. C. 20036

Charles Deull  
Scholastic Inc.  
55 Broadway  
New York, NY 10012-3999

Ronald L. Plesser  
Paul W. Jamieson  
Scholastic, Inc.  
1200 19th Street, N.W.  
Washington, DC 20036

+Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Room 5-B540  
Washington, D. C. 20054

+Qualex International  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Room CY-B402  
Washington, D.C. 20554

**+ VIA ELECTRONIC FILING**