

**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.¹

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.

¹ *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”)² needed to be revised in order to “more effectively carry out Congress’s directives in the TCPA.”³ 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.⁴ 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

² 47 U.S.C. § 227.

³ *Notice*, ¶ 1.

⁴ 47 U.S.C. § 227(c)(1)(A).

of such a list.⁵ After considering the input of approximately 240 parties who filed comments or replies in the proceeding, the Commission released its *Report and Order*⁶ 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,⁷ and opted instead to require company-specific DNC lists.⁸ 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*,⁹ 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,¹⁰ and for notifying telemarketers of the regulations and requirements relating to the list.¹¹ 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

⁵ 47 U.S.C. § 227(c)(3).

⁶ *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*”).

⁷ *Id.* at 8760-61, ¶¶ 14-15.

⁸ *Id.* at 8763-67, ¶¶ 20-24.

⁹ *Notice*, ¶ 53.

¹⁰ 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.¹² These advantages are still valid today. The imposition of a national DNC list would provide no advantages over and above those provided by the

¹¹ 47 U.S.C. § 227(c)(3)(L).

¹² *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,"¹³ 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."¹⁴

The Commission should clarify that, as provided in the Act,¹⁵ 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

¹³ 47 U.S.C. § 227(c)(4).

¹⁴ 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

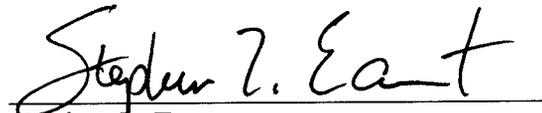
The Commission should focus its attention on stricter enforcement of its existing rules, rather than adopting new ones. In particular, a national DNC list is not needed, and would be costly and administratively burdensome to administer. Whatever course the Commission determines is appropriate, the primary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

¹⁵ "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 cursive script that reads "Stephen L. Earnest". The signature is written in black ink and is positioned above a horizontal line.

Stephen L. Earnest
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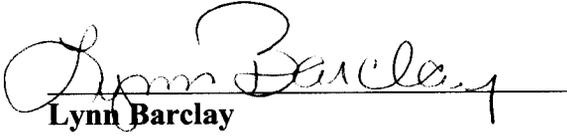
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 31st 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.


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