Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act	)	CC Docket No. 92-90
of 1991	)	
	)	

WORLDCOM REPY COMMENTS

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SUMMARY

The Commission should refrain from imposing additional regulations on the practice of telemarketing. Comments submitted in this proceeding demonstrate that telemarketing offers consumers enormous benefits. Most importantly, telemarketing is used to introduce consumers to novel and competitive products and services. These products are often being offered by newer and/or smaller businesses striving to compete with larger, often incumbent, corporations. The success of MCI's long distance service is a testament to the positive impact telemarketing has on opening up a monopoly market. Inflicting additional telemarketing regulations on companies will put an end to, or significantly diminish, these benefits. Consequently, *all* consumers will be subject to higher prices and decreases in the variety of products and services available, and will be denied valuable information concerning the available products and services.

As WorldCom discussed in its opening comments, implementation of the proposed national do-not-call regime would impose unconstitutional restrictions on free speech. Additionally, the Commission cannot lawfully require entities subject to its jurisdiction to participate in the Federal Trade Commission's (FTC) national do-not-call registry because the FTC final rules conflict with the procedural and substantive requirements of the Telephone Consumer Protection Act of 1992 (TCPA). Moreover, the proposed alternative network and technological solutions for implementation of national do-not-call list are untenable.

If the Commission, nevertheless, decides to implement a national do-not-call regime, the Commission needs to address the competitive implications of such a regime and capture the intent of the established business relationship (EBR) exemption in the

definition of telephone solicitations. The definition of EBR should be modified to address the situation where a historically monopoly market is in the nascent stages of competition, a circumstance that was not present at the time the TCPA was enacted and the Commission first considered this issue. Specifically, the definition should either include new entrants to markets that historically had dominant or monopoly providers, or exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitive providers in the market have substantially penetrated the market.

Furthermore, the Commission should not disrupt the cost-efficiency benefits of predictive dialers. As comments in this proceeding demonstrate, predictive dialers are used by a variety of entities and are an extremely valuable tool in the reduction of the cost of goods and services. Moreover, WorldCom and others recognize the importance of using predictive dialers responsibly, in particular, in ways that minimize the number of abandoned calls generated. If the Commission, nevertheless, determines that regulation, in the form of a maximum abandonment rate on calls generated through the use of a predictive dialer, is necessary to ensure that a reasonable practice is adhered to by all users, it should also ensure that users are still able to obtain the cost-efficiency benefits of predictive dialers. As comments demonstrate, a maximum abandonment rate of 5% minimizes abandoned calls, while still allowing for the substantial benefits achieved by predictive dialers. A lower mandated maximum rate would effectively eliminate the benefits incurred in the use of predictive dialers.

Finally, the Commission should not require companies engaged in telemarketing, or that use predictive dialers, to send Caller ID information. Telemarketers using a private branch exchange ("PBX") that connects to their telephone company through typical T-1 trunks are not able to transmit calling party number (CPN). Such a mandate would impose considerable costs on the telemarketers and/or the common carriers carrying their traffic. Moreover, not all carriers are able or permitted to transmit CPN. Therefore, the end-user consumer may never receive the information. It is unjust and inappropriate for the Commission to require telemarketers to send information (creating an expectation in the mind of consumers that they should receive it) when the Commission knows that the consumer may never receive it. Such a regulation creates a situation where companies will be unfairly accused of breaking the law, and as a consequence, face undue litigation and unjust, and potentially irreparable, harm to their reputation.

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WORLDCOM REPLY COMMENTS

WorldCom, Inc. (WorldCom) respectfully submits these comments in response to initial comments filed pursuant to the Commission's Notice of Proposed Rulemaking (*Notice*) in the above referenced dockets.[1]

Subsequent to the initial round of comments in this proceeding, the Federal Trade Commission (FTC) adopted amendments to its Telemarketing Sales Rule.[2] These amendments adopt a national do-not-call (NDNC) registry and purport to regulate predictive dialers and Caller ID practices.[3] Pursuant to the Telephone Consumer Protection Act of 1992 (TCPA) this Commission was tasked with evaluating the need for a NDNC database and, if opting to implement such a regime, establishing the applicable rules. Pursuant to the Communications Act of 1934, as amended, it is also this agency that has jurisdiction over, and has the necessary expertise concerning, the regulation of predictive dialers and Caller ID. In order to fulfill its duties, the Commission therefore

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[1] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278 and CC Docket No. 92-90, FCC 02-250 (rel. Sept. 18, 2002)(*Notice*).
[2] *See* Telemarketing Sales Rule; Final Rule, 68 FR 4580 (Jan. 29, 2003)(FTC Final Rule).

needs to conduct an independent analysis before deciding to adopt any rules concerning these issues.

Comments submitted in this proceeding demonstrate that telemarketing offers consumers enormous benefits. Most importantly, telemarketing is used to introduce consumers to novel and competitive products and services. These products are often being offered by newer and/or smaller businesses striving to compete with larger, often incumbent, corporations.[4] The success of MCI's long distance service is a testament to the positive impact telemarketing has on opening up a monopoly market. Telemarketing is also used to update consumers on more familiar services such as mortgage refinancing opportunities,[5] insurance plans,[6] wills,[7] and newspapers and newsletter deliveries.[8] Telemarketing expedites commercial transactions, provides consumers the opportunity to transact business with merchants from the convenience of their homes,[9] and provides them the opportunity to ask specific questions, thereby enabling consumers to have a better understanding about a particular product or service.[10] Additionally, it reduces the prices of products and services by stimulating price competition and reducing transaction

[3] In adopting its rules, the FTC not only exceeds its subject matter jurisdiction, it in effect regulates common carriers, thereby attempting to regulate entities over which it lacks jurisdiction.
[4] *See e.g.,* Comments of Personal Legal Plans, Inc., Summary Comments ["Telemarketing is cost effective and allows small businesses to compete with much larger companies who have greater resources at [their] disposal."]; National Energy Marketers Association (NEM), p. 5; WorldCom, pp. 8-11.
[5] *See e.g.,* Comments of Ameriquest Mortgage Company, p.2; NAMB, pp. 1-2; MBA, pp. 1-2;
[6] *See e.g.*, NAII, p. 1.
[7] *See e.g.*, Personal Legal Plans, Inc., p.1.
[8] *See e.g.*, The Seattle Times, p. 1; Newspaper Association of America, pp. 3-5; Newsletter & Electronic Publishers Association, p. 1.
[9] Comments of the National Retail Federation, p. 2.
[10] Household, p. 2; WorldCom, p. 12.

costs.[11] As an example, telemarketing significantly contributed to the reduction in long distance rates consumers have experienced over the years.[12]

The proposed regulations will put an end to, or significantly diminish, these benefits. Consequently, *all* consumers will be subject to higher prices and decreases in "the variety of products and services available and consumers' wealth of knowledge about them."[13] Similar to WorldCom, other companies have experienced a significant decline in sales due to the mere observance of state do-not-call regimes.[14] This demonstrates that a national do-not-call list would not, as some have claimed, enable companies to operate more efficiently in their practice of telemarketing by reducing the time spent calling uninterested consumers.[15] Unlike persons who do not want to be called by a particular company, those who may dislike telemarketing in general may still make purchases via telemarketing when provided with information about products or services that meet their needs. For example, *The New York Times* reported on one consumer who "finds the calls annoying, . . . [yet] [s]he herself bought something from a telemarketer once: she switched to MCI for long-distance phone service after receiving a

[11] WorldCom, pp. 11-13 and Exhibit B, T. Randolph Beard, PH. D., "Telemarketing and Competition: An Economic Analysis of 'Do Not Call' Regulations" (March 2002).
[12] *Id.*
[13] ATA, p. ix. *See e.g.,* Comments of Personal Legal Plans, Inc., Summary Comments ["A National DNC list would be a significant barrier for small and new businesses to enter the marketplace – resulting in higher prices and less product choices to the consumers."]; National Association of Independent Insurers, p. 2 ["The cost of [a national registry] would be significant and result in increased insurance costs for all Americans. Additional restrictions, such as limitations on the use of predictive dialers … would likewise result in increased costs and reduced choice for American consumers."] NAMB, p 2 ["For small businesses … a national do-not-call list will still be very expensive to maintain."] *See also, e.g.*, Convergys Corp., p. 5. ["Any regulation that would render [predictive dialers] unusable would result in significant cost increases to business and, by extension, the consumer."]; Magazine Publishers of America, p. 8 ["[I]ncreased telemarketing costs would ultimately be passed on to consumers in the form of higher prices for goods and services."]
[14] *See e.g.,* MBNA, p. 3 ["MBNA has experienced a 50% decrease in telemarketing sales in states that have enacted DNC laws."]; WorldCom, p. 10. *See also*, The Seattle Times Company, p. 2 ["45.7% of all new subscriptions sales are sold via telemarketing … telemarketing accounts for 59% of circulation sales."]
[15] *See* FTC Final Rule, 68 FR at 4632.

call."[16] As Visa states, the evidence of adverse effects on sales due to do-not-call requirements "…indicates that consumers themselves cannot accurately predict the calls that they wish to receive."[17]

The comments supporting more regulation of the practice of telemarketing raise a number of concerns that the proposed regulations do not address. For example, a number of comments refer to the prevention of fraud and telemarketing scams.[18] Preventing fraud and telemarketing scams require enforcement of the current regulations. The proposed regulations will curtail the marketing ability of legitimate entities, while fraudulent companies are as apt to violate any new rules as the existing regulations. Others raise concern with the collection and sharing of personal information.[19] The proposed regulations do not address this practice and, in fact, as discussed by Privacilla.org, may ultimately contribute to the concern by creating a government database containing consumer information.[20]

If the Commission nevertheless decides to implement more regulations on the practice of telemarketing there are certain factors the Commission should consider, as discussed below.

I. THE COMMISSION NEEDS TO ADDRESS THE COMPETITIVE IMPLICATIONS OF A NATIONAL DO-NOT-CALL REGIME

[16] *See* Abht Raghanathun, "Here's My Number, Don't Use it," THE NEW YORK TIMES, Sunday, February 11, 2001.
[17] Visa, p. 2. ["It is hard to imagine that many consumers will reject an attractive offer for a product or service that they wish to acquire simply because it is offered to them over the telephone."]
[18] *See e.g.*, National Consumers League, p. 1; Intuit, Inc., p. 1; NARUC, p. 3; Tennessee Regulatory Authority and Tennessee Attorney General, p. 1.
[19] *See e.g.*, The Electronic Privacy Information Center, pp. 2-5.
[20] Privacilla.org, pp. 16-19.

If the Commission implements NDNC, the Commission needs to address the competitive implications of such a regime and capture the intent of the established business relationship (EBR) exemption in the definition of telephone solicitations. The definition of EBR should be modified to address the situation where a historically monopoly market is in the nascent stages of competition, a circumstance that was not present at the time the TCPA was enacted and the Commission first considered this issue. Specifically, where consumers desiring an essential service such as local telecommunications are forced to obtain that service from a government-mandated monopoly, once competition for that service is introduced consumers should be deemed to have an established business relationship with all providers of that service - incumbents and new entrants alike - until competition in the market is sufficiently developed. This recognizes consumers' interest in services to which they currently subscribe, and ensures that consumers are aware of their options with regard to that service and have consciously, rather than by default, chosen a particular provider with which to establish a relationship. Moreover, to do otherwise would leave a potent marketing tool solely in the hands of incumbent providers while tying the hands of competitors striving to gain market share.

As WorldCom discussed in its initial comments, unlike other products and services offered over the telephone, consumers receiving a call on a landline phone are necessarily purchasers of local phone service and could benefit from information on new options for their local phone service. The TCPA defines "telephone solicitations" to which a NDNC regime will apply to exclude calls to any person with whom the caller has an EBR. When first considering the EBR in 1992, the Commission found "that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. Moreover, such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship."[21] Basically, an established business relationship demonstrates a consumer's interest in the products or services offered by a company and therefore presents less of a concern that related calls will be an unwanted intrusion to the consumer.

But the Commission's current EBR definition presumes consumers specifically chose a particular company to fulfill their needs and further presumes that consumers know that they now have an alternative. Because of the historical monopoly in the local service market, however, consumers cannot be regarded as having chosen a particular provider for this service. Moreover due to the infancy of competition in this market, many consumers are yet unaware that they have a choice in local phone service providers. For that reason, they do not take the initiative to investigate the other options that are available to them, even if they are unsatisfied with their current provider. As the National Energy Marketers Association (NEM) pointed out, in a newly competitive market, calls to consumers serve a dual purpose: "The call serves an educational purpose in addition to the sales component of the call."[22] If these calls are restricted, an important means to inform consumers of their new competitive opportunities for basic services to which almost all consumers subscribe would be lost.[23]

[21] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, CC Docket No. 92-90, FCC 92-443, para. 34 (1992).

[22] NEM, p. 5. *See also, id,* p. 6. ["NEM submits that the exceptions to the definition of telephone solicitation are almost meaningless exemptions at this stage of competitive energy market development …"]

[23] *See id*, p. 5.

Consequently, the definition of "established business relationship" should include new entrants to markets that historically had dominant or monopoly providers, until such time as competitive providers in the market have substantially penetrated the market. This definition of EBR recognizes consumer's initial lack of choice in providers and their need to be informed of their options regarding their existing services.

Alternatively, the Commission could define EBR to exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitors for that service have sufficiently penetrated the market. Although this alternative would still deny consumers valuable information on their existing services, it would recognize the lack of choice consumers had in establishing a business relationship and reduce the competitive advantage of incumbent providers. As WorldCom discussed in its opening comments, NDNC will not only have a detrimental impact on the development of competition in the local telecommunications services market, it provides incumbents a competitive advantage in the already competitive markets such as the long distance services market. The incumbents' nearly complete dominance of the local market virtually exempts them from the effects of a NDNC list in marketing their competitive services. None of the comments filed by any other party disputes this or provides the Commission with a mechanism to avoid the competitive impact of its proposal. In fact, it appears that the competitive advantage is not lost on one incumbent company, Verizon, which urges the Commission to replace the patchwork of state do-not-call rules with a coherent national system, as "[s]ome states [] fail to provide established business relationship exemptions in their DNC rules."[24]

II. ADOPTING A NATIONAL DO-NOT-CALL DATABASE IN TANDEM WITH THE FTC'S NATIONAL DATABASE WOULD VIOLATE THE REQUIREMENTS OF THE TELEPHONE CONSUMER PROTECTION ACT.

As WorldCom explained in its opening comments, the Commission's proposal that it require entities subject to its jurisdiction to comply with the FTC's proposed do-not-call rules would be unlawful, because the proposed FTC rules conflicted with the requirements of the TCPA.[25] WorldCom also explained that, because the FTC rules had not yet been adopted, the Commission could not conduct the necessary inquiry into their compliance with the statutory mandates of the TCPA.

On December 18, 2002, the FTC released its final amended Telemarketing Sales Rule, and an accompanying statement of basis and purpose.[26] Although the final rules vary in some respects from the proposed rules described in the FTC's requests for comments, the conflicts between the requirements of the TCPA and the FTC's proposed do-not-call list remain. The Commission therefore cannot lawfully require entities under its jurisdiction to comply with the FTC's do-not-call rules.

First, adopting a rule that simply requires entities subject to the Commission's jurisdiction to comply with the FTC's database rules would violate the Congressional mandate that the Commission conduct an independent inquiry into several factors when

[24] Verizon, pp. 6-7.
[25] *See* WorldCom, pp. 30-36.
[26] *See supra,* n. 2.

determining whether to establish a national database.[27] At a minimum, section 227 requires the Commission to invite subsequent comments regarding the effect that requiring compliance with the recently adopted FTC rules would have on the differing needs of telemarketers operating in different venues, and how those differences should be taken into account when developing a means of recouping the cost of a nationwide database.[28] Those issues have not been addressed in the comments already submitted, and the Commission therefore does not possess an adequate record to conduct the mandated inquiry. Adopting a rule requiring entities under its jurisdiction to participate in the FTC's national do-not-call database based solely on the current record would therefore be arbitrary and capricious and in violation of section 227.

Further, the FTC's do-not-call rules fail to comply with several substantive requirements of section 227. Like the proposed rules, the final FTC rules are not limited to the "residential subscribers" covered in section 227, but instead restrict outbound telemarketing to any "person" that has indicated a desire to be included in the national database.[29] "Person" is defined as "any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity."[30] Although the FTC has now exempted most business-to-business calls,[31] the broad definition of "person" still includes some calls to non-residential lines, and is therefore beyond the scope of the telemarketing restrictions authorized by section 227. For the reasons articulated in WorldCom's opening comments, the Commission may not lawfully require entities

[27] *See* WorldCom, pp. 31-33; 47 U.S.C. § 227(c)(4).
[28] *See* 47 U.S.C. § 227(c)(4).
[29] *See* 16 C.F.R. § 310.4(b)(iii).
[30] *See id.* § 310.2(v).
[31] *See id.* § 310.6(b)(7).

subject to its jurisdiction to participate in a nationwide do-not-call database that includes non-residential callers.[32]

The FTC's final telemarketing rules also present additional conflicts with the requirements of the TCPA. For example, participating in the FTC regime would violate the TCPA's prohibition of the use of an FCC-approved nationwide do-not-call database for any purpose other than compliance with state law and the TCPA, because businesses and telemarketers would use the FTC database to comply with the rules of the FTC which were issued under a separate statutory regime.[33] Moreover, although the final rules prohibit the sale of the do-not call list for purposes other than compliance with the relevant rules, the FTC rules do not indicate whether the FTC intends to allow access to the national database for the "routine uses" referenced in its February 27, 2002 notice; permitting such uses would also violate the requirements of section 227(c)(3)(K).[34]

Moreover, the FTC's adoption of a narrow definition of an "established business relationship" warrants independent FCC action to establish rules defining the scope and application of the EBR exemption. Under the FTC's rules, a purchase giving rise to the relationship must occur within eighteen months of the telemarketing call or, if the relationship stems from a customer inquiry, the triggering event must take place within three months of the call.[35] The TCPA does not require such a restricted definition of an established business relationship, and the Commission's rules therefore do not impose

[32] *See* WorldCom, pp. 33-34.
[33] *See id*, pp. 35-36; 47 U.S.C. § 227(c)(3)(K).
[34] *See* WorldCom, pp. 35-36.
[35] *See* 16 C.F.R. § 310.2(n).

such limits on telemarketing activity.[36] Nor should the Commission narrow the scope of the business relationship exception in this way.

Instead, as discussed *supra*, "established business relationship" should be defined in a manner that reflects the historical lack of competition in the market for the provision of telephone service and allows new entrants to the market to provide subscribers with information regarding competitive service offerings. Specifically, the definition should either include new entrants to markets that historically had dominant or monopoly providers, or exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitive providers in the market have substantially penetrated the market.[37] Because the FTC's proposed rules do not address the unique situation facing the telecommunications industry, the FCC should independently examine the competitive implications of the established business relationship exception, and define the term to reflect the infancy of competition in this market. Indeed, because the FTC has defined an established business relationship more narrowly than the FCC's existing definition of the term, adopting the FTC's definition would produce even more anticompetitive effects.

In sum, the Commission cannot lawfully require carriers to participate in the FTC's national do-not-call registry because the FTC final rules conflict with the procedural and substantive requirements of section 227 of the TCPA. The FCC should therefore decline to act in conjunction with the FTC to establish a single do-not-call database.

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[36] *See* 47 C.F.R. § 64.1200(c)(3).
[37] *See* pp. ___ *supra*.

Additionally, assuming the Commission could, consistent with the TCPA, require entities subject to its jurisdiction to use the FTC's database for purposes of compliance with rules the Commission adopts in this proceeding, it would need to ensure the accuracy of the FTC's database. The accuracy of the database is affected by such factors as how consumers register or remove their number from the database, and procedures to ensure that the number is still associated with the person desiring to be registered on the database. The FTC proposes to accomplish the latter by having the database system "include a procedure to periodically check all telephone numbers in the national registry against national databases and those telephone numbers that have been disconnected or reassigned will be purged from the registry."[38] The FTC does not, however, discuss how often this purging will occur. Given the frequency with which consumers change numbers, such checking would need to occur often (e.g. at least monthly) in order to maintain the integrity of the database. The FTC also does not elaborate on the national databases to be used, how the accuracy of those databases will be ensured, and how the system will be certain to account for all subscriber changes. Therefore, before the Commission considers adopting rules that incorporate the FTC's database, it should seek comment and evaluate these factors and ensure these issues are resolved satisfactorily.

III. THE PROPOSED NETWORK AND TECHNOLOGICAL SOLUTIONS TO IMPLEMENTATION OF A NATIONAL DO NOT CALL REGIME ARE UNTENABLE

[38] FTC Final Rule, 68 FR at 4640.

The Commission seeks comment on whether network technologies have been developed over the last decade that may allow consumers to avoid receiving unwanted telephone solicitations.[39] The Commission further requests comment on what factors the Commission should consider in deciding whether to rely on these technologies. In particular, the Commission seeks comment on how any such technologies operate and how much they would cost to implement.[40]

Several companies set forth in their comments what they see as technological solutions to implementing a do-not-call list. Verisign and Call Compliance explain that they have worked together to devise a network-based mechanism for implementing a national-do-not-call list.[41] LSSi Corp. describes in its comments a national do-not-call database that it would administer. WorldCom first emphasizes that the Commission should seek further comment on these proposals before making any decision to adopt them. The Verisign/Call Compliance and LSSi Corp. proposals as outlined in the comments contain insufficient estimates of the cost to telemarketers and telephone carriers and do not fully explore the potential technical barriers to implementation. Telemarketers and telephone carriers need more opportunity to fully evaluate the cost and technical issues associated with implementation of these proposals.

<u>Verisign/Call Compliance Proposal.</u> The solution set forth by Verisign and Call Compliance uses the Signaling System Seven (SS7) network to provide do-not-call screening to carriers for all outgoing calls from the carrier's telemarketing customers.

[39] *Notice*, para. 21.
[40] *Id.*
[41] *See* Verisign Comments and Call Compliance Comments.

Carriers would offer this service to their telemarketing customers. Carriers would purchase this service from Verisign on a per-dip basis.[42]

Verisign and Call Compliance assert that their network-based do-not-call solution requires no additional software or hardware and that carriers should easily be able to implement their proposal. This is not entirely true for WorldCom. It may also not be true for other carriers. WorldCom is unable at this time to implement over its entire network the Verisign/Call Compliance proposal due to software compatibility issues. A significant portion of WorldCom's network uses a specialized version of SS7 signaling that does not support the same signaling that the Verisign/Call Compliance solution would require. Specifically, Verisign would require carriers to interface with SS7 TCAP messaging. The Verisign/Call Compliance solution should be fully compatible with all networks before the Commission considers adopting it as mechanism for implementing do-not-call rules. Additionally, even where compatibility exists, the Verisign/Call Compliance solution requires capital expenses to augment the existing SS7 network. Additional links are needed to support the traffic that will use the SS7 network for purpose of the Verisign/Call Compliance solution.

There may be many other technical complications associated with the Verisign/Call Compliance solution. For example, if the tone that is transmitted to a telemarketer indicating that a certain telephone number has been placed on the do-not-call list is the same tone that a telemarketer receives when a number has been disconnected, the telemarketer may continue attempting to call the consumer. The telemarketer may make several call attempts just after the tone is received (in case there had been an error when

[42] Verisign, p. 8.

initially receiving the tone) or call again a month or so later (in the event that the number has been re-connected). Each time the telemarketer attempts to call that number, it may incur a per-dip charge from the carrier. If, on the other hand, the do-not-call tone is unique, a carrier's equipment may not be equipped to recognize it. Parts of WorldCom's equipment may not be sufficiently updated to be able to detect a new and unique tone. This is just one example of the possible technical hurdles associated with Verisign/Call Compliance's proposal that the Commission must further consider. There may be more. In addition, the Commission should further investigate the costs that would be incurred by carriers and potentially passed on to telemarketers.

The Verisign/Call Compliance proposal is further problematic in that the above-described cost and technical feasibility issues most certainly will result in some carriers being unable to use Verisign/Call Compliance's solution while other carriers are able to do so. The Commission should not adopt a telemarketing rule that forces telemarketers to choose one carrier over another, distorting marketplace choice and competition.

<u>LSSi Corp. Proposal</u>**.** It also would be premature for the Commission to adopt the do-not-call database solution proposed by LSSi Corp.[43] First, LSSi does not provide information on the costs associated with its database solution. One of the reasons the Commission originally rejected a national do-not-call database was the potentially high costs of such a mechanism. WorldCom explained in its opening comments that such costs could be significant.[44] No additional information has been placed on the record to convince us otherwise.

[43] LSSi Corp. Comments
[44] WorldCom, p. 10.

Second, the accuracy issues associated with a national do-not-call database still exist under LSSi's solution, as LSSi acknowledges. LSSi states that no mechanism currently exists to track the movement of a subscriber between carriers, and thus, a customer must re-register when they change telephone numbers.[45] Thus, as WorldCom and others have pointed out, the Commission's concerns with accuracy have not been fully resolved.[46] These cost and accuracy issues require further consideration by the Commission before requiring telemarketers to use such a database.

IV. IMPOSITION ON OF THE PROPOSED NATIONAL DO-NOT-CALL REGIME IS UNCONSITITUTIONAL

In its opening comments, WorldCom demonstrated that the Commission's proposed national do-not-call database violates the First Amendment.[47] None of the comments filed by any other party meaningfully disputes this or provides the Commission with a mechanism to avoid the constitutional problems raised by its proposal.

As WorldCom explained in its comments, the proposed national do-not-call database expressly discriminates between commercial and non-commercial speech.[48] As the Supreme Court made clear in *Discovery Network*,[49] however, this type of discrimination is prohibited unless the government can show a reasonable fit between its disparate treatment of commercial and non-commercial speech, and its purported

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45 LSSi, pp. 6-7.
46 TCPA Report and Order, para. 12.
47 *See* WorldCom, pp. 19-28.
48 *See* WorldCom, pp. 21-26 (noting that the database would not extend to calls made by a tax exempt nonprofit organization which is defined to include religious and political organizations and telemarketers [calling] on behalf of tax-exempt nonprofit organizations).
49 507 U.S. 410 (1994)

interests.[50] To make such a showing, the government must prove that its discrimination against commercial speech furthers the government's underlying goal in a direct and material way.[51] Although a few parties cursorily assert that the do-not-call regulations are consistent with the *Central Hudson* test,[52] no commenting party makes any effort to demonstrate that the Commission's proposed regulations pass muster under *Discovery Network*. Nor could they do so. As WorldCom explained, the asserted justification for the national do-not-call registry is protecting consumer privacy.[53] But the distinction between commercial and noncommercial calls is entirely unrelated to this asserted interest.[54] Indeed, as WorldCom noted, the purported intrusion into the home caused by a telemarketer is identical whether that call seeks a contribution to a charity, or to a political campaign, or seeks to offer goods or services.[55]

In its comments WorldCom also explained that, to the extent the Commission's telemarketing rules draw content-based distinctions among types of speech, they are subject to strict scrutiny as opposed to the analysis otherwise employed pursuant to

[50] *Id.* at 417 n.13.
[51] Edenfield v. Fane, 507 U.S. 761, 767 (1993).
[52] *See, e.g.,*Comments of the Public Utilities Commission of Ohio, pp. 2-7.
[53] *See, e.g.*, *Notice*, para. 49.
[54] Although a number of parties assert that the Supreme Court's decision in Rowan v. U.S. Post Office, 397 U.S. 729 (1970), expressly supports the constitutionality of a national do not call database, that assertion is wrong. *See, e.g.,* Attorneys General at 31-33. *Rowan* held only that a consumer may constitutionally refuse to receive unwanted mail solicitation on an individual company-by-company basis. *Rowan*, 397 U.S. at 737 (noting that an "affirmative act of the addressee giving that that he wishes no further mailings from *that* mailer" is required under the statute) (emphasis added). Thus, *Rowan* says nothing about a law mandating a blanket ban on the receipt of calls. And *Rowan* certainly does not purport to countenance what the Commission has proposed in this case – a blanket ban on the receipt of only speech that is commercial in nature.
[55] *See* WorldCom, pp. 21-25. The do-not-call regime recently adopted by the Federal Trade Commission suffers from the same infirmity. The FTC's regulations expressly exempt charitable organizations from their scope. *See* 16 C.F.R. 3.106(a). The FTC candidly admitted, however, that consumers are disturbed by unwanted calls regardless of whether the caller is seeking to make a sale or to ask for a charitable contribution. *See* FTC Final Rule, 68 FR at 4637.

Central Hudson.[56] Content-based regulations are presumptively invalid, and will not stand even with respect to speech that is otherwise proscribable where, as here, the reasons for the content-based distinction is wholly unrelated to the reason the speech may be banned in the first instance.[57] In their comments, no party disputed this, nor did any party even purport to suggest that the proposed do-not-call regulations would survive strict scrutiny. For this reason as well, the Commission should decline to adopt its proposed rules, and instead implement a regime that is consistent with the First Amendment.[58]

V. THE COMMISSION SHOULD NOT DISRUPT THE COST-EFFICIENCY BENEFITS OF PREDICTIVE DIALERS

As comments in this proceeding demonstrate, predictive dialers are used by a variety of entities and are an extremely valuable tool in the reduction of the cost of goods and services.[59] Moreover, WorldCom and others recognize the importance of using predictive dialers responsibly, in particular, in ways that minimize the number of abandoned calls generated.[60] If the Commission, nevertheless, determines that regulation, in the form of a maximum abandonment rate on calls generated through the

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[56] *See id*, pp 28-30.
[57] *Id.*
[58]WorldCom demonstrated that alternatives exist that are less restrictive than the blanket do-not-call policy the Commission has proposed. *See id.* at 26-28. In particular, company-specific do-not-call lists protect consumer privacy in a manner that is more narrowly tailored. Although several parties speculate that requiring consumers to opt-out of receiving calls on a company specific basis may not be as effective as a blanket opt-out rule, a, *see, e.g.*, Comments of John Schiff at 2, as courts have made clear [s]uch speculation hardly reflects the careful calculation of costs and benefits that our commercial speech jurisprudence requires. U.S. West v. FCC, 182 F.3d 1224, 1239 (10th Cir. 1999) (reversing rule regarding customer use of CPNI because, among other reasons, an alternative less restrictive of speech was available).
[59] *See e.g.,* Newspaper Association of America, pp. 15-17; Convergys Corporation, pp. 5-6; Magazine Publishers of America, pp. 19-22; Cendant Corporation, Section II; Sprint, p. 6; Metris Companies, Inc., p. 4; Comcast Cable Communications Inc., pp. 14-15; SyTel, p. 5; Discover Bank; Allstate Life Insurance; Electronic Retailing Association, pp. 14-16.
[60] *Id.*

use of a predictive dialer, is necessary to ensure that a reasonable practice is adhered to by all users, it should also ensure that users are still able to obtain the cost-efficiency benefits of predictive dialers. As comments demonstrate, a maximum abandonment rate of 5% minimizes abandoned calls, while still allowing for the substantial benefits achieved by predictive dialers. A lower mandated maximum rate would effectively eliminate the benefits incurred in the use of predictive dialers.[61]

Some parties raise the issue of retention of call records for the purpose of determining compliance with a mandated abandonment rate.[62] If the Commission mandates a maximum abandonment rate and requires record retention, the Commission should only require the maintenance of information that is relevant to determining compliance and avoid adopting requirements that are overbroad and, consequently, impose an unnecessary burden on users without any corresponding benefit. As WorldCom and others discussed, the abandonment rate should be defined as the percentage of calls that reach a live person that are abandoned, i.e., (abandoned calls) divided by the sum of all calls handled by a live agent + abandoned calls.[63] Therefore, the equipment need only record the number of calls for which a "live voice" response was received (denominator) and the number that was subsequently (after the determination of a "live voice") disconnected by the ACD (numerator). Information of this type is sufficient to enable the Commission to determine whether a firm is properly operating within the acceptable call abandonment rate.

Additionally, as discussed in WorldCom's initial comments, the Commission should allow for flexibility in the time period over which to measure the abandonment

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[61] *Id.*

rate, or at least not make it a daily percentage as some have suggested. Such a short time period is unduly burdensome from a record keeping perspective, virtually unenforceable, and does not account for short-term fluctuations in marketing campaigns.[64] Moreover, a short time period provides no additional protection to consumers, as the impact of abandoned call is the aggregate number over time and not the number in a given day.[65]

SyTel Limited (SyTel) suggests that the Commission should regulate 1) the minimum ring time,[66] and 2) the "time to transfer" a call to a representative, seeming to suggest an "offhook" measurement.[67] Neither of these recommendations should be implemented. First, there is no need for the Commission to regulate the ring time. WorldCom is unaware, and SyTel offers no meaningful evidence, of parties engaging in the practice described by SyTel as justification for such regulation, i.e., the practice of dialing numbers and disconnecting all calls still ringing once all the agents are occupied.[68] This practice would seem to defeat the purpose of predictive dialers, which is to "predict" the average time it takes a consumer to answer the phone and when a representative will be available to take the next call. MCI dialers are programmed to disconnect the call if there is no answer after 4 ring cycles, which is approximately 12

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[62] *See e.g.*, DMA, p. 33.
[63] *See* SyTel, p. 5; Electronic Retailing Association, p. 16.
[64] *See,* Reese Brothers, p. 7 ["A short time period for measurement is also unduly burdensome from a record keeping perspective as well as almost unenforceable as a regulatory measure, as inadvertent violations will proliferate."]; Electronic Retailing Association, p. 16 ["Abandonment rates will vary significantly based on the time of the call, type of campaign, number of operators available, number of telephone lines employed by the call center or other factors. As such, any measurement of abandonment rates must be over a sufficiently long period of time (e.g., monthly) to account for these short-term fluctuations."].
[65] *See,* Reese Brothers, p. 7 ["The impact of abandons on consumers is based on the aggregate number of contacts made by a telemarketer over time and not the number in any given day."]
[66] Sytel, p. 3.
[67] *Id*., pp. 4-5.
[68] *See id.,* p. 5.

seconds, as suggested by DMA guidelines.[69] This provides a consumer intending to answer the call sufficient time to reach the phone. It does not benefit consumers, particularly those choosing to ignore the call, to be subject to a longer ring time.

Second, abandoned calls should not be defined so as to include any measure of "time to transfer." Regulation in terms of time to transfer is unnecessary because the entity making the call is already motivated to have a representative available as soon as possible or to disconnect. As SyTel notes, once the "predictive pause" is detected the quality of the call declines,[70] as does the probability of a successful solicitation. As DMA points out, "marketers recognize that consumers do not like dead air and frequently hang-up while waiting for a sales representative."[71] Consequently, legitimate entities take every measure to reduce, if not eliminate, consumer wait time for an available representative. Moreover, contrary to SyTel assertions, the answer machine detection (AMD) does not keep a consumer "waiting whilst deciding whether they might be an answering machine."[72] The AMD functions on the premise that a "live" greeting is shorter than a greeting on an answering machine. Accordingly, as soon as the pause in greeting is detected, indicating an answer by a person versus a machine, the automatic call distributor (ACD) sends the call to an agent. It is only after the greeting has extended beyond that of a typical "live" person that the AMD determines the receiver to be a machine and disconnects.

If the Commission, nonetheless, were to require a measurement for "time to transfer," it should be five seconds from the end of the called party's greeting as DMA

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[69] *See* The DMA Guidelines for Ethical Business Practice, Article #41 (April 2002)(DMA Article #41).
[70] SyTel, p. 4
[71] DMA, p. 33.
[72] SyTel, p. 5.

suggests,[73] and not be based on an offhook standard as SyTel seems to suggest. Contrary to SyTel's statement, DMA's guidelines do not suggest a measurement time based on an "offhook" standard.[74] Under the US DMA standard the time measurement begins after the equipment determines the answerer is live and there are no available agents.[75]

As WorldCom discussed in a proceeding on this matter before the California Public Utilities Commission (CPUC), measuring this interval based on an offhook standard would require precise knowledge of when the phone is removed from the hook. Even assuming *arguendo* that the dialer equipment could be modified to initiate timing upon the receipt of an off hook signal, as explained in the affidavit of Randy Hicks on behalf of WorldCom before the CPUC, this knowledge is dependent on the off hook or "answer supervision" signal being returned from the called party's serving end office switch to the originating switch when the call recipient takes the phone off hook.[76] The "answer supervision" signal is only supported by the use of SS7 from end to end and consistent signal transmission, a factor that is not present for all calls when calls are routed interstate over various switch routes and through various local exchange carriers. In fact, a WorldCom survey of its call centers revealed that it does not receive an off hook signal on between 5% and 10% of all outbound calls. "As a result, a standard that is premised on the time when an end user goes off hook would be inexact, impracticable to

[73] DMA, p. 33.
[74] SyTel, p. 4.
[75] DMA Article #41.
[76] Affidavit of Randy Hicks, In Support of the Opening Comments of WorldCom, Inc. on Draft Decision of Commissioner Brown, Before the Public Utilities Commission of the State of California, R.02-02-020, para. 7 (May 28, 2002).

measure, and difficult to enforce given that a significant number of calls would not be detected."[77]

Moreover, a measurement based on the time that the consumer's phone goes offhook is nonsensical. In performing research for the proceeding before the CPUC, WorldCom found that "there is a strong possibility that the called party will not have picked up the handset, completed his or her greeting, and registered a pre-set pause within the two-second agent availability standard."[78]

VI. THE COMMISSION SHOULD NOT REQUIRE COMPANIES ENGAGED IN TELEMARKETING TO SEND CALLER ID INFORMATION

As WorldCom stated in its initial comments, the Commission should not require telemarketers to send Caller ID information, such as calling party number (CPN). Larger telemarketers using a private branch exchange (PBX) that connects to their telephone company through typical T-1 trunks are not able to transmit CPN. Such a mandate would impose considerable costs on the telemarketers and/or the common carriers carrying their traffic.

Larger entities commonly use a PBX switch in making telemarketing calls. An entity that uses a PBX connects to its telephone company through a trunk or trunk group. While an Integrated Services Digital Network (ISDN) trunk may be capable of transmitting CPN, typical T-1 trunks do not have this capability.[79] Dial America claims that "[a]ll carriers offer Integrated Services Digital Network (ISDN) T-1's, also know as

[77] *Id.*
[78] *Id.*, para. 9.
[79] Even if the entity used a predictive dialer that could transmit Caller ID information, and not all predictive dialers have this capability, the entity would still need an ISDN connection.

Primary Rate Interface (PRI) . . ."[80] It is unclear how Dial America purports to know this information for all carriers. But accepting Dial America's assertion at face value, it is not certain that such ISDN service is available from all carriers in every location from which a telemarketer may operate, or with sufficient capacity. Even where ISDN is available, many carriers' network switches would have to be upgraded, at great expense, with the addition of a significant number of digital switch ports to accommodate the telemarketers shift to ISDN-PRI trunks. Carriers in an already constrained capital market may find it impossible to modify their network switches. Moreover, it would be a substantial cost for telemarketers to upgrade their systems or purchase new equipment, namely the ISDN-PRI trunks, to replace their current T-1 trunks. The cost may be so high as to be cost prohibitive for some telemarketers. This would mean that an entity would be unable to engage in the practice of telemarketing or, if sending Caller ID information were a condition on the use of predictive dialers, to use predictive dialers.

The FTC, in looking at this question, determined that "telemarketers are able to transmit this information at no extra cost, or minimal cost."[81] This is based on the flawed premise that, for a telemarketer that uses a PBX switch connected to its carrier through a T-1 trunk, the telemarketer's carrier can simply assign a telephone number to each of the call centers that would be transmitted as the CPN to the consumers' Caller ID device. But it has never been a requirement, or an anticipated need, for a network switch to be able to generate a pseudo-CPN on trunk groups. Not all switches have this functionality. Consequently, some carriers may not be able support this request at all or, even if an

[80] Dial America, Attachment A, p. 1.
[81] FTC Final Rule, 68 FR at 4623.

individual carrier is able to support the transmission of a pseudo-CPN in some locations, cannot do so universally.

As a result, a Caller ID requirement would have a detrimental impact on certain common carriers, namely those carriers with switches that lack this functionality, by competitively favoring other carriers. If telemarketers were required to transmit Caller ID information they would begin switching or choosing their provider based on the provider's ability to provide them with this pseudo-CPN. The Commission should not, in order to regulate telemarketing practices, implement a regulation that will effectively take business from some common carriers and give it to others or, *assuming it were feasible*, in effect force carriers whose switches lack this functionality to bear the substantial cost of modifying their network to accommodate this telemarketing requirement. In the case of WorldCom, for example, while some of its switches have a switch software package that allows for WorldCom to put an option on the trunk group which will send a pseudo-CPN with every call that is originated on that trunk group, a substantial portion of its switches do not have this functionality and it is not currently possible to do any additional development of new features for these switches.

Moreover, aside from the carrier's ability to assign a number or the telemarketer's ability to transmit the number, the Caller ID information may still not reach the called consumers. As the FTC recognized, "the route traveled by a call could pass through a switch that lacks Caller ID functionality, essentially dropping the Caller ID data but forwarding the rest of the call transmission."[82] This is because the continued transferring of Caller ID information is dependant on whether each of the carriers over whose

[82] FTC Final Rule, 68 FR at 4625-26.

network the call is routed uses SS7 throughout its network. The Commission specifically declined to require carriers that do not have SS7 call set up capability to make the SS7 investments that would enable them to pass CPN.[83] Additionally, carriers with SS7 capability that do not have the software to provide blocking and unblocking features are prohibited from passing CPN under Commission rules.[84] Therefore, not all carriers are able or permitted to transmit CPN.

The FTC seems unconcerned with the consequences that flow from these circumstances, merely concluding that because this "phenomena" is outside the control of the telemarketer the telemarketer would not be held liable when the failure to transmit Caller ID results from such an occurrence. In the minds of the public (the company's potential customers), however, companies whose telemarketing calls arrive without the required Caller ID information will appear to be law-breakers. Most people receiving such calls will never learn that the company was not responsible for such occurrences. But they will infer - wrongly - that the company broke the law. It is unjust and inappropriate for the Commission to require telemarketers to send information (creating an expectation in the mind of consumers that they should receive it) when the Commission knows that the consumer may never receive it. Regardless of the ultimate outcome concerning liability, such a regulation creates a situation where companies are certain to face unfair litigation and unjust, and potentially irreparable, harm to their reputation.

[83] *In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID, Memorandum Opinion and Order on Reconsideration*, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-281, FCC 95-187, para. 5 (1995).
[84] 47 C.F.R. §64.1601(d)(2).

VII. STATE JURISDICTIONAL ISSUES

In its *Notice* the Commission sought comments on States' authority to regulate telemarketing calls that originate outside of the State.[85] WorldCom noted in its opening comments its concurrence with DMA's comments on this matter, namely that State laws regarding telephone solicitations do not apply to interstate calls.[86]

Many parties in this proceeding made arguments as to whether or not the Commission should preempt State laws if it decides to adopt a NDNC regime. The Attorneys General basically argue that the Commission would have to specifically preempt State telemarketing laws in order for them to be inapplicable to *interstate* calls. Regardless of whether or not the Commission opts to preempt State laws with regard to *intrastate* calls, State telemarketing statutes, to extent they purport to regulate *interstate* telemarketing calls, are already preempted by both the TCPA and the Communications Act of 1934.[87] No further action by the Commission, therefore, is necessary. Although a clear statement by the Commission would assist in clarifying the issue in the future.

The Supremacy Clause of the Constitution provides that the laws of the United States "shall be the Supreme Law of the Land…any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[88] This Clause thus gives Congress the power to preempt State law.[89] As the Attorneys General noted, Congressional intent is the cornerstone of a preemption analysis.[90] Congress' intent may be "explicitly stated in the

[85] *Notice,* para. 36.
[86] WorldCom, p. 2, n. 6.
[87] Application of state law to interstate calls may also violate the dormant Commerce Clause.
[88] U.S. Const. art. VI, cl. 2.
[89] *See* Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 368 (1986).
[90] Attoneys' General, p. 8.

statute's language or implicitly contained in its structure and purpose."[91] State law is also preempt when "federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it."[92] Additionally, preemption may result not only from action by Congress, but also from action by a federal agency "acting within the scope of its congressionally delegated authority."[93]

The Attorneys General argue that when Congress legislates in an area that States have traditionally occupied, unless there is a clear indication otherwise, the assumption is that the historical police powers of the States were not superseded by the Federal Act.[94] But here such an assumption is not valid or necessary. First, the regulation of interstate calls is *not* a field which the States have traditionally occupied.[95] In fact, many courts have noted that § 152 of the Communications Act vests in the FCC the *exclusive* authority to regulate interstate communications.[96]

Second, the TCPA itself demonstrates a clear congressional intent to specifically prohibit State regulation of interstate telemarketing calls by excluding interstate calls from the State law not preempted. Section 227(e)(1) provides:

> State law not preempted – Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes

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[91] Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992).
[92] *Id.*
[93] *Louisiana Pub. Serv. Comm'n*, 46 U.S. at 369.
[94] Attorneys General, pp. 8-9.
[95] *See* United States v. Locke, 529 U.S. 89, 108 (2000)["[A]n 'assumption' of non-preemption is not triggered when the State regulates in an area where there has been a history of significant federal presence."]
[96] *See* National Ass'n of Regulatory Util. Comm'rs v. FCC, 746. F.2d 1492, 1498, 1499 (D.C. Cir. 1984); North Carolina Utils. Comm'n v. FCC, 537 F.2d 787, 791-94 (4th Cir. 1976); Ivy Broad Co. v. American Tel. &Tel. Co., 391 F.2d 486, 491(2d Cir. 1968).

> more restrictive ***intrastate*** requirements or regulations on, or which prohibits…the making of telephone solicitations.[97]

Especially in light of the Commission's general authority over *interstate* matters, if Congress intended States to have authority to add more restrictive interstate requirements Congress surely would have stated so explicitly. Instead it *solely* preserved State's authority over *intrastate* calls. If the State could impose more restrictive interstate regulations, then they word "intrastate" would be entirely superfluous.[98] Moreover, the straightforward textual analysis is bolstered by legislative history. The telemarketing bill reintroduce on July 18, 1989, provided that nothing in the bill shall peempt any State law that imposes "more restrictive requirements or regulations."[99] Yet, when the bill was introduced on March 6, 1991, the critical language had been changed to provide that nothing in the bill shall preempt any State law that imposes "more restrictive *intrastate* requirements or regulations."[100]

The Attorneys General make much of the statute's language regarding the State's use of the national database for purposes of administering and enforcing State regulations and laws, arguing that this language indicates Congress' lack of intent to preempt State law.[101] Given that Congress had specifically preserve certain State laws from preemption, the statute's reference to State laws is not surprising. Certainly a consumer who enrolls in the national registry could receive a telephone solicitation from an entity

[97] 47 U.S.C. § 227(e)(1) (emphasis added).
[98] *See e.g.,* Bailey v. United States, 516 U.S. 137, 145 (1995) (noting canon of construction that "a legislature is presumed to have used no superfluous words") (*quoting* Platt v. Union Pacific R. Co., 99 U.S. 48, 58 (1878)).
[99] *See*, H.R. 2921.
[100] *See*, H.R. 1304 (emphasis added).
[101] Attorneys General, p. 10-11.

operating in the same State as the consumer resides. Thus the consumer may be entitled to additional protection under a State law that was preserved by Section 227(e)(1).

The Commission additionally asks, and parties commented on, what potential role States could play in administering and enforcing federal do-not-call requirements.[102] The TCPA already clearly outlines the roles of State in enforcing the federal do-not-call requirements. Section 227(f)(1) provides:

> Authority of States. – Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions . . .[103]

CONCLUSION

The Commission should refrain from imposing additional regulations on the practice of telemarketing.

Respectfully submitted,

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[102] *Notice*, para. 61.
[103] 47 U.S.C. 227(f)(1).

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January 31, 2003

Certificate of Service

I, Lonzena Rogers, hereby certify, that a true and correct copy of WorldCom, Inc. Reply Comments in the matter of CG Docket No. 02-278 was served on this thirty-first day of January, 2003 on the following by U. S. Postal Service first class mail or electronically on the following:

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