Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20580

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**

REPLY COMMENTS OF

DIALAMERICA MARKETING, INC.

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Reply Comments of DialAmerica Marketing Inc.

Summary of Comments

DialAmerica Marketing, Inc.'s (DialAmerica) reply comments focus on the amendments of the Telemarketing Sales Rule (TSR), which were released after the end of the first comment period for the NPRM of the Federal Communications Commission (Commission). Our comments focus on three specific topics:

1. National do-not-call list – We believe the Commission has the jurisdiction to address the need for a national list, not the Federal Trade Commission (FTC).
2. Abandonment rate – The abandonment rate (AR) should be 5%, not 3%. The AR should be managed on a 30 day basis.
3. DialAmerica's Sponsor Magazine Program – This program has been of vital importance to the organizations we support, and the FTC's amendment to the TSR is unclear on exemption from any national do-not-call list for programs of this nature.

I. NATIONAL DO-NOT-CALL LIST

The Commission was clearly mandated by Congress to determine if a national do-not-call list should be implemented. The FTC's amended rule creating a national do-not-call list is clearly flawed. The limited jurisdiction of the FTC will create chaos and confusion for consumers that register for this list and continue to receive calls from those groups not covered.

The consumer confusion will result in an escalated number of complaints. The manpower needed to respond to these complaints will be, at a minimum, double the amount currently required by the combined states with do-not-call lists already implemented. Where will the funding come from for the additional staff? Was this cost considered in the $16 million that the FTC is requesting in their appropriations from Congress?

The FTC amended the TSR before the Commission's comment period had ended. It appears the FTC has moved forward with their amended rule with the creation of a national list without consulting with the Commission. Does the Commission work for the FTC?

II. ABANDONED CALLS

DialAmerica believes that the Commission has the regulatory authority to determine an acceptable AR for the use of predictive dialers, not the FTC. Once again, it would appear that the FTC is venturing out of its jurisdiction by setting a 3% AR. The difference between 3% and 5% abandoned calls is negligible to the consumer but has a significant negative impact on a telemarketer's efficiency. As stated in our original comments, the average consumer receives 82 telemarketing calls a year (FTC Forum transcript June 6, 2002 page 92.) A 5% AR would mean the average consumer would receive four abandoned calls a year or one every three months. At a 3% AR the average consumer would receive two and one half abandoned calls per year, a reduction of 1.5 abandoned calls per year.

DialAmerica gathered statistics comparing a 3% AR versus a 5% AR. The results of the analysis reflected a 29% decrease in efficiency caused by fewer contacts. A reduction in efficiency of this magnitude will result in higher costs. These increased costs will ultimately be passed directly to the consumer. We are of the strong opinion that in order to eliminate <u>1.5</u> abandoned calls <u>per year</u>, the telemarketing industry, and the consumer, should not have to suffer the consequences that a 29% reduction in efficiency will cause.

The FTC's amended rule regarding time constraints in managing the AR will not work for the telemarketing industry. Unlike the FTC amended rule, the California abandonment law mandates compliance over a 30-day period. This time period allows telemarketers the flexibility to more realistically meet their requirement. What the FTC has failed to realize is that whether the AR is managed on a per day basis or a 30 day basis, the total number of abandoned calls does not change. An example would be that if a thousand customer pickups occurred in one day with a 3% AR, the result would be 30 abandoned calls. In a 30 day period, there would be a total of 900 abandoned calls under this scenario. If the same campaign were run and the AR rate was managed over a 30 day period, the telemarketer would still have to adhere to a total of 900 abandoned calls. By allotting a 30 day period, the telemarketer is provided the ability to manage to better efficiency. The result of the more advantageous efficiency will ultimately benefit the consumer.

In addition to lost efficiency, DialAmerica has significant concerns regarding enforcement of this amendment. We are of the opinion that there will be great difficulty monitoring compliance. We are especially concerned that this overly restrictive and unnecessary AR regulation combined with the difficulty in monitoring its enforcement, will be cause for some telemarketers to take the non-compliance route. DialAmerica prides itself on complying with all regulations, and this will put us at a distinct competitive disadvantage.

Does the FTC realize they have enacted an amendment that, quite simply, allows the telemarketer to "opt-in" to be compliant? Should the Commission feel that the previous industry guideline of 5% is not a reasonable rate, then there should be a ban on the use of predictive dialers.

III. DIALAMERICA'S SPONSOR MAGAZINE PROGRAM

It is unclear if DialAmerica's Sponsor Magazine Program will be exempt from the FTC's national do-not-call list. DialAmerica has been conducting this program for the past 45 years under strict state regulations without incident. On each call made, we disclose that we are calling from DialAmerica as well as the percentage (12 ½) that we will be donating to the Sponsor. In addition, the customer receives a bill from DialAmerica, a letter from the Sponsor, and all pertinent contact information for both parties. We do not solicit credit cards on our sales calls. Credit card payment is an option when we perform call back verification from a separate facility to confirm the order. This program has been extremely successful with donations exceeding $196 million dollars. If the exemption doesn't apply, this program will eventually cease to exist.

The charitable organizations that DialAmerica generates funds on behalf of would be unable to take this type of program in house. In addition to the lost revenues, it will be difficult for these organizations to deliver their message to the general public. When we call on behalf of one of our sponsors, we are delivering their message every time. These calls often result in the consumer sending a contribution directly to the charitable organization. The communities these organizations serve would certainly feel the impact if DialAmerica's Sponsor Magazine Program were unable to continue.

CONCLUSION

DialAmerica has offered reasonable solutions in our previous comments to the FTC and the Commission addressing consumer concerns regarding the telemarketing industry. The amendments proposed by the FTC raise many questions regarding their authority and do not address all consumer concerns. We hope the Commission realizes the FTC's actions are not providing solutions that will fully address consumer's concerns. DialAmerica also hopes the Commission is more open minded than the FTC when addressing the telemarketing industries' and the consumers' concerns in its efforts to bring a fair and balanced approach to the telemarketing industry.