

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

FURTHER COMMENTS OF VERIZON

In the Do-Not-Call Implementation Act, Congress instructed this Commission “to maximize consistency with the rule promulgated by the Federal Trade Commission,”¹ and this Commission has sought comment on how it should do so.² The most straight-forward way for this Commission to meet this obligation is to adopt the FTC’s requirements as its own, and Verizon urges this Commission to do exactly that. In addition, to make sure that sellers are not subjected to conflicting regulatory requirements, this Commission should preempt inconsistent state DNC regulations.

Congress enacted this legislation to deal with the unusual situation with which it was presented as a result of the FTC’s adoption of its DNC registry. DNC rules are perceived as a popular response to telemarketing, but the FTC has only limited jurisdiction, and, therefore, its rules do not cover all telemarketing activity.³ The FTC, for example, has no jurisdiction over a number of industries and no authority over intrastate telemarketing activities. Under the

¹ Pub. L. No. 108-10 § 3, 117 Stat. 557 (2003).

² FNPRM ¶ 6.

³ Congress also made clear that nothing in the Do-Not-Call Implementation Act “should be construed by the FTC to confer any additional authority to regulate common carriers, or any other industries, outside of this Commission’s statutory jurisdiction.” H. Rep. 108-8, 108th Cong., 1st Sess., at 9 (2003).

Telephone Consumer Protection Act (“TCPA”), however, this Commission has jurisdiction over all telephone solicitations, interstate and intrastate, made by all industries. Only this Commission, then, can provide a consistent national DNC regime.

Congress found that a consistent national DNC regime is the desired result. The House report concluded that the Do-Not-Call Implementation Act “endeavor[s] to prevent situations in which legitimate users of telephone marketing are subject to conflicting regulatory requirements. The purpose of the consultation and coordination requirements of section 3 and the reporting requirements of section 4 are intended to prevent this possibility from becoming reality.”⁴ The best way for this Commission to satisfy this directive is simply to adopt the FTC’s regulations as its own. This Commission should, therefore, adopt rules mirroring sections 310.4(b)(1)(ii)-(iii) and 310.4(b)(3) of the FTC’s regulations.

The FTC’s regulations are already consistent with most of the requirements of the TCPA.⁵ This Commission should resist the urge to try to “improve” on the FTC’s drafting. Any inconsistencies in language will lead only to uncertainty, litigation and disputes. Only those modifications that are necessary should be made, such as to eliminate the limitation in the FTC’s rules that make its DNC regime applicable only to interstate telemarketing calls.⁶ This Commission should also state in its order adopting these rules that it will use the database

⁴ H. Rep. 108-8, 108th Cong., 1st Sess., at 9 (2003).

⁵ 47 U.S.C. § 227(c)(3)(D)-(G), (I). The FTC’s proposed rules concerning fees will satisfy 47 U.S.C. § 227(c)(3)(H).

⁶ 16 C.F.R. § 310.2(cc), defining “telemarketing” as “a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones *and which involves more than one interstate telephone call*” (emphasis added).

established by the FTC and use the FTC’s database administrator.⁷ Finally, this Commission should add to the FTC’s language additional provisions required by the TCPA.⁸

Perhaps most important to achieving Congress’ direction to “endeavor to prevent situations in which legitimate users of telephone marketing are subject to conflicting regulatory requirements” is that this Commission clearly preempt state DNC rules. Verizon and others described the consumer confusion and unnecessary burdens caused by multiple, inconsistent DNC registry regimes.⁹ Congress recognized this in enacting the TCPA and gave this Commission the authority to establish a “a single national database”¹⁰ and told this Commission the features that such a system should have.¹¹ This detail was provided to give clear guidance to this Commission, as the House committee noted, “because state laws will be preempted” by Commission action.¹² Once this Commission has done this, no state may require the use of a different list.¹³

There can be no rational case made for the continuation of separate state DNC systems after the national system is established. As one state regulator advised, “the Texas PUC encourages the FCC to consider that the creation of one national no-call list would not only

⁷ See 47 U.S.C. § 227(c)(3)(A).

⁸ 47 U.S.C. § 227(c)(3)(B), (C), (J), (L).

⁹ Texas PUC at 4; Colorado PUC at 4; Sprint at 14.

¹⁰ 47 U.S.C. § 227(c)(3).

¹¹ 47 U.S.C. § 227(c)(3)(A)-(L).

¹² H.R. Rep. 102-317, 102nd Cong., 1st Sess., at 21 (1991).

¹³ “If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.” 47 U.S.C. § 227(e)(2).

reduce the costs associated with the development and maintenance of two separate no-call databases providing essentially the same service to the same group of consumers, it would also fulfill consumer expectations that registration on a national no-call list should stop unwanted telephone solicitation calls from any entity subject to federal and state regulatory authority.”¹⁴ Similarly, the Colorado PUC urged that there not be different customer deadlines and required actions (such as renewal dates) for the various lists.¹⁵

The coexistence of both state and federal lists can only confuse customers, and the existence of two federal lists would truly baffle them. A consumer may pay the fee to be listed on a state-sponsored list only to learn that she could have gotten the same protection for free with a federal list. Or she chooses the FTC list — because it sounds like a more encompassing national endeavor— only to find that she is still receiving telemarketing calls from firms in industries beyond the FTC’s jurisdiction. And it is these confused and disappointed consumers who will ultimately pay the cost of establishing and maintaining these multiple lists. That duplicative and inconsistent rules are also bad for telemarketers is obvious — the House report on the do-not-call legislation states the authors’ goal “to prevent situations in which legitimate users of telephone marketing are subject to conflicting regulatory requirements.” For example, different rules as to the timing of customer DNC requests, when DNC lists must be produced and when they become effective would require telemarketers to go through multiple, unnecessary processes to meet the different schedules. These inconsistencies may make it difficult for telemarketers to comply and would certainly add costs to their operations.

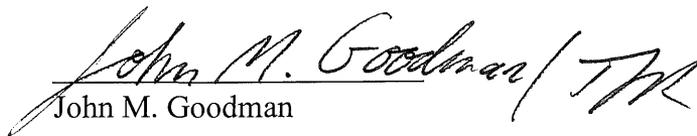
¹⁴ Texas PUC at 4.

¹⁵ Colorado PUC at 4.

Conclusion

This Commission should adopt the FTC's rules as its own, with only those changes that are required to conform to the TCPA, and should preempt inconsistent state DNC rules.

Respectfully submitted,


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