



May 8, 2003

Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act  
CG Docket No. 02-278, FCC 03-62; 68 FR 16250 (April 3, 2003)

Dear Madam or Sir:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the proposal issued by the Federal Communications Commission (the "Commission")<sup>2</sup> to implement the Do-Not-Call Implementation Act<sup>3</sup>. The Commission seeks comment on how to maximize consistency with the Federal Trade Commission's ("FTC") recently issued final Telemarketing Sales Rule<sup>4</sup> (the "FTC Telemarketing Rule") and other matters.

### **ACB Position**

ACB supports the efforts of the Commission and the FTC to address the burgeoning problems associated with the unscrupulous and intrusive behavior of some telemarketers. The Congressional mandate to "maximize consistency with the rules promulgated by the Federal Trade Commission"<sup>5</sup> provides an opportunity for the Commission and the FTC to develop a uniform mechanism for consumers to express their preferences and allow responsible telemarketers to direct their efforts toward those consumers most likely to be receptive to hearing about products/services that may be of value to them.

Many of the provisions that concerned ACB in the proposed Telemarketing Sales Rule have been resolved in the final rule. The FTC Telemarketing Rule preserves the ability of

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<sup>1</sup> ACB represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

<sup>2</sup> 68 Fed. Reg. 16250 (Apr. 3, 2003).

<sup>3</sup> Pub. L. No. 108-10, Do-Not-Call Implementation Act, 2003

<sup>4</sup> 68 Fed. Reg. 4580 (Jan. 29, 2003).

<sup>5</sup> Pub. L. No. 108-10, Section 3, Do-Not-Call Implementation Act, 2003.

community banks to contact individuals with whom they have an existing relationship by allowing businesses to contact existing customers—provided a transaction establishing a business relationship occurred within 18 months preceding the telemarketing call. It is important that this provision be preserved in the Commission’s final rule.

One issue of concern to ACB not addressed in the FTC’s final rule is the relationship with the myriad state do-not-call registries that exist around the country. As a result, telemarketers must examine multiple databases and rules to determine whether a marketing call may be made to an individual. This creates an overly burdensome process for telemarketing activities and increases the risk that an organization may be in violation of potentially inconsistent rules. ACB believes that the Commission should develop a final rule that establishes a uniform national standard for do-not-call registration.

## **Background**

In 1991, the Telephone Consumer Protection Act<sup>6</sup> (“TCPA”) authorized the Commission to establish “a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase.”<sup>7</sup> For a variety of reasons articulated in the Commission’s 1992 TCPA rulemaking<sup>8</sup>, the Commission declined to create such a national do-not-call database. Rather, it issued a comprehensive set of rules governing telemarketing practices, including the establishment of company specific do-not-call lists.

More recently, both the Commission and the FTC have begun initiatives focused on combating aggressive telemarketing tactics that have proliferated in response to developments in technology and reduced telecommunication costs. In January 2002, the FTC issued a proposed telemarketing sales rule that envisioned the development of a national do-not-call registry. Later in the year the Commission issued a notice of proposed rulemaking that requested comment on whether/how the 1992 decision not to create a national do-not-call registry should be reevaluated. Finally, in January 2003, the FTC Telemarketing Rule was released establishing a national do-not-call registry that is expected to become operational sometime in late 2003.

In authorizing funding for the FTC initiative, Congress subsequently mandated that the Commission issue final rules with respect to telemarketing no later than September 7, 2003. Moreover, Congress required that the Commission must “maximize consistency” with the FTC Telemarketing Rule. While the FTC’s rule does not directly apply to banks, it does apply indirectly to third-party service providers who provide telemarketing services for banks. As the Commission has broad jurisdiction over telecommunication

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<sup>6</sup> Pub. L. No. 102-243, Telephone Consumer Protection Act, 1991.

<sup>7</sup> Pub. L. No. 102-243, Section 3(c)(3) Telephone Consumer Protection Act, 1991.

<sup>8</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992).

matters in general, any telemarketing rule issued by the Commission would apply to banks, and most other entities.

### **Contacting Existing Customers**

While many consumers may indicate a preference for not receiving telemarketing calls in general, many of those same consumers would welcome special offers from companies with whom they currently do business. Under the FTC Telemarketing Rule, a bank customer who is placed on the centralized “do-not-call” list will still be able to receive a call from an agent of his or her bank offering reduced mortgage rates, higher CD returns, or more efficient, enhanced products.

The FTC Telemarketing Rule preserves the right of businesses to contact those individuals with whom they have an existing business relationship. Businesses are allowed to contact individuals with whom they have an established business relationship within 18 months preceding a telemarketing call regardless of whether the individual has elected to be included in the national do-not-call registry. In order to avoid any confusion for both consumers and businesses, ACB believes that it is imperative that the Commission adopt the same approach in defining the framework for established business relationships.

### **Centralized “Do-Not-Call” Registry Should Prevail Over State-Based Registries**

As of January 2002, more than twenty states have established, or are in the process of establishing, do-not-call databases, each with their own set of operational rules, access procedures, and unique limits on use. Unlike the authority provided to the FTC pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act<sup>9</sup>, the relevant statute governing the Commission with regard to telemarketing—the Telephone Consumer Protection Act—can require states to utilize the national do-not-call database should the Commission establish such a system, and in general provides more preemptive authority than is available from the FTC.

The establishment of a national “do-not-call” list that does not preempt state lists will complicate, rather than centralize, the “do-not-call” process. Currently, telemarketers are subject to the existing telemarketing rules and a patchwork of state telemarketing laws/regulations. As a result, telemarketers must examine multiple databases and comply with multiple regulations to determine whether a marketing call may be placed to an individual. The establishment of a non-preemptive national do-not-call database will add to this complex process. Therefore, the Commission should seek to develop rules that incorporate a uniform national registry that supercedes state “do-not-call” requirements.

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<sup>9</sup> Pub. L. No. 103-297, Telemarketing and Consumer Fraud Abuse Prevention Act, 1994.

## **Conclusion**

ACB appreciates the opportunity to comment on this important matter and supports the efforts of the Commission to develop a telemarketing rule that protects consumers' interests, while minimizing the impact on business and community banks. We stand ready to work with the Commission as it develops its final rule. Should you have any questions on this subject, please contact the undersigned at 202-857-3121 or via email at [cbahin@acbankers.org](mailto:cbahin@acbankers.org); or Rob Drozdowski at 202-857-3148 or via email at [rdrozdowski@acbankers.org](mailto:rdrozdowski@acbankers.org).

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin  
Senior Vice President  
Regulatory Affairs