

May 19, 2003

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Telephone Consumer Protection Act Amendments – Further Notice of Proposed Rulemaking Comments - CG Docket No. 02-278; CC Docket No. 92-90

Dear Ms. Dortch:

AARP appreciates the opportunity to comment on the Federal Communications Commission's (FCC) Further Notice of Proposed Rulemaking to amend rules adopted pursuant to the Telephone Consumer Protection Act of 1991 (TCPA). The Commission is to be commended for initiating this effort to address a number of concerns consumers have regarding telemarketing calls. Our comments today will be brief as we will allow our January 31, 2003, submission to stand as representative of most of our positions on these issues.

AARP's interest in the Telephone Consumer Protection Act and concerns about telemarketing abuses are longstanding. With more than 35 million members aged 50 and above, AARP is the largest membership organization representing the interests of older Americans. We are greatly concerned about the rampant telemarketing fraud perpetrated against older people. Because many people do not realize that they are victims, and many others are unwilling to report these frauds to law enforcement agencies, there is no way to quantify with any certainty either the number of victims or the dollars lost. Many of these victims are older people, specifically targeted by these scam artists. Consequently, AARP supports federal and state laws, regulations, and public policies designed to outlaw fraudulent and deceptive telemarketing practices and to provide adequate remedies for victims.

Consistency with the Federal Trade Commission's Actions

As we detailed in our comments earlier this year, AARP urges the Commission to adopt rules that closely mirror the actions taken by the FTC in its amendments to the Telemarketing Sales Rule. This section summarizes our position in several specific areas.

Automated Calling Systems - The FTC has addressed the predictive dialer problem by requiring telemarketers to make certain disclosures to the person receiving the call. In addition, the FTC rule would require that a person receive a recorded message upon answering the phone. Accordingly, a telemarketer that uses a predictive dialer would commit an abusive act or practice if the telemarketer did not make the required disclosures on any call in which a consumer

answers the phone. We urge the FCC to amend the TCPA implementing rules to reflect the changes announced by the FTC in this area.

Prohibition of Caller ID Blocking - AARP believes that the FCC should amend the Caller ID rules to prohibit telemarketers from blocking consumers' Caller ID. Such a prohibition would especially aid consumers who receive telemarketing calls placed with a predictive dialer. As the FTC noted, "when the predictive dialer disconnects the call, the consumer often has no effective way to determine from whom the call originated and thus to whom he or she should direct a 'do-not-call' request..." If telemarketers were prohibited from blocking Caller ID, consumers with Caller ID would have a greater ability to monitor telemarketers who are violating do-not-call restrictions.

The FTC took this very approach in its December Order in requiring telemarketers to display a working return telephone number and we ask this Commission to adopt that approach.

National Do Not Call Registry – AARP is a strong supporter of the FTC's decision to implement a national Do Not Call registry. However, as the Commission recognizes, there are clearly areas in which the FCC can exercise its jurisdiction regarding telemarketing under the TCPA, and in which the FTC cannot. These include telemarketing activity by common carriers, banks and insurance companies. In light of the FTC's year-end action, and to ensure consistency across government regulations, it is critical that the FCC follow the FTC's lead and address these issues.

Therefore, the Commission should adopt rules that would cover entities to which the jurisdiction of the FTC does not extend. AARP believes strongly, however, that the FCC should not undertake creation of a separate national list as such an effort would be duplicative, costly, confusing to consumers and ineffective. All telemarketers covered by the FCC's jurisdiction should be required to purchase the national registry maintained by the FTC.

The Commission should preserve the right of the states to enforce their own laws and state Do Not Call programs and to work cooperatively with federal authorities for the benefit of consumers. AARP believes the Commission's regulations should not preempt state "Do Not Call" requirements that provide consumers with greater protection against telemarketers. It would be illogical and unfortunate for the Commission's proposed rule to *reduce* the protections afforded consumers in those states whose do-not-call laws are more beneficial to consumers.

It is important that even if the proposal adopted by the Commission does not actually preempt state law, the *effect* of the rules does not create a de facto preemption of state law. De facto preemption might occur should the proposed federal program undermine the state's ability to enforce its own do not call programs. The FTC has been adept in addressing this concern and we recommend that the FCC take the same approach.

The combination of the FTC's registry with the amended FCC rules should ensure that placement of a consumer's telephone number on the list will establish a blanket prohibition on telemarketers calling the consumer, unless the consumer affirmatively acts to authorize calls from the specific entity on whose behalf the telemarketer is calling. Authorization by negative

option can be confusing to consumers and would be ineffective in reducing unwanted telemarketing calls. This practice should not be allowed.

“Established Business Relationship” Definition – AARP is concerned that the current definition of “established business relationship” is too broad, increasing the likelihood that consumers may get unwanted telemarketing calls. As we asserted in December, not every contact with an entity should establish a business relationship between the entity and the consumer. A consumer who merely inquires or provides an opinion about a company’s products and services should not be subjected to subsequent telemarketing calls from the company. In order to be considered “established,” the relationship should also be ongoing, i.e., where the consumer has completed a transaction (making a purchase or a payment) with a company within the 12 consecutive months prior to the call. In addition, if a consumer requests placement on a company’s Do Not Call list, that request should be extended to all of the company’s affiliates with whom the consumer does not have an ongoing relationship. Such a measure is necessary to counter the ability companies now have to share consumer information with their affiliates. A consumer who does not do business with a company’s affiliate cannot give “express invitation or permission” to the affiliate to call the consumer for telemarketing purposes. The Commission should not extend the exemption by rule.

Exemptions - AARP believes any exemption for an existing business relationship must be limited to those situations where the relationship is current, ongoing, voluntary, involves an exchange of consideration, and has not been terminated by either party. Such relationships demonstrate that consumers have chosen to be customers of that company. Past inquiries or applications alone are not an indication that the consumer has chosen to do business with that company, and certainly do not mean the consumer wishes to be called, despite being on a Do Not Call list. Consumers will have no incentive to seek information from businesses in an attempt to comparison shop if, by doing so, they subject themselves to unwanted and often intrusive telemarketing calls. The spirit of a Do Not Call law will not be met by creating exemptions that facilitate telemarketing.

Wireless – The Commission also seeks comment on how wireless telephone communications should be treated under the TCPA. AARP believes that wireless telephone numbers should be considered “residential telephone numbers” for the purposes of the Commission’s rules on telephone solicitations. As the use of wireless phones for both local and long distance calling is becoming more and more prevalent, it is only natural to assign the same rules and requirements to telemarketers accessing consumers through their wireless phones as exist for wireline communications. The FTC has made a decision to provide the opportunity for consumers to place their wireless numbers on the national Do Not Call registry. We urge the FCC to tailor its rules to treat wireless numbers the same as wireline numbers as they pertain to jurisdiction within the TCPA.

Conclusion

The Federal Communications Commission is to be commended for the issuance of this Further Notice of Proposed Rulemaking and for its effort to amend the Telephone Consumer Protection Act. In the eleven years since the implementation of the TCPA, AARP and other organizations

have worked hard to ensure its effectiveness. Adoption of the Commission's recommendations will go a long way toward providing consumers with the protection they deserve from unwanted telephone calls.

We look forward to working with Commission staff and others in the ensuing months to address many of the concerns outlined today. We urge the Commission to adopt the revised rule while incorporating the changes we have advocated. If you have any questions, please feel free to contact me or call Jeff Kramer of the Federal Affairs staff at 202/434-3800. Thank you.

Sincerely,

David Certner
Director
Federal Affairs