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May 30, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
SUBMITTED ELECTRONICALLY

Re: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278
Reply to *Ex Parte* Presentation of MCI

Dear Ms. Dortch:

This letter is in reply to *ex parte* meeting, on May 22, 2003, of Sally McMahon and Lisa Smith of MCI and Ruth Milkman of Lawler, Metzger & Milkman, LLC with Bryan Tramont, Trey Hanbury, Brad Doline, and Erica McMahon of the FCC, as documented by a letter from Gil M. Strobel¹.

In the presentation MCI covered the same issues covered by their original comments to the Further Notice of Proposed Rulemaking in this docket. I will address certain specific issues of the *ex parte* presentation:

Implementation of the DNC list will not undermine pro-competitive goals of the Telecommunications Act of 1996.

In MCI's presentation they express concern that the DNC rules will undermine the pro-competitive goals of the Telecommunications Act of 1996², that is, the ability of Competitive Local Exchange Carriers (CLECs) to gain access to local markets.

I understand the need to balance the goals of the 1996 act with the DNC Implementation Act³. I do not agree that the existing business relationship or other provisions of the DNC regulations will harm the local competition provisions of the 1996 Act.

¹ Letter from Gil M. Strobel, Lawler, Metzger & Milkman, LLC, to Marlene H. Dortch, May 23, 2003, submitted to the record of docket 02-278

² Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) ("1996 Act")

³ Do-Not-Call Implementation Act, Pub. L. 108-10, 117 Stat. 557 (2003) ("DNC Act")

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If the only way for CLECs to attract customers were outbound telemarketing, there would be merit in MCI's concerns. However, there are multiple channels of advertising available to them, including newspaper, radio, and television advertising. These other channels of advertising can reach telephone consumers just as easily as telemarketing. It is true that "consumers are accustomed to buying telephone service over the phone", however that statement also applies to consumers responding to other advertising by placing telephone calls to the carrier.

I agree that the Commission should, as far as possible, make the rules fair to both CLECs and Incumbent Local Exchange Carriers (ILECs). The Commission, in the DNC rules, should restrict the use by ILECs of the EBR exemption and allow the exemption to be used only for matters relating to service problems, verification of request for changes (as may be required by anti-slamming regulations), but not to sales calls asking consumers to refuse requests by CLECs to change carriers. Such regulations would serve the consumer protection purposes of the DNC Act and the fair competition requirements of the 1996 Act.

Caller ID Does Need to be Addressed.

In order to enforce the provisions of the DNC act the consumer should have the telephone number of the caller. I have found that violators of the New York State DNC list often hang up as soon as they realize that I do not wish to receive their call. If I am awakened or am busy, I have to "play along" to keep the telemarketer on the phone while getting pen and paper and determining their identity. With caller ID a consumer could immediately interrupt a telemarketer's scripted sales pitch to ask for his identity. If the caller hangs up, the number will be saved on the caller id screen to allow the telemarketer to be reported by phone number.

The caller ID will also allow the consumer to know the telephone number of an abandoned call to determine if the caller is a telemarketer and, if so, report the violation.

Conclusion

Competitive local exchange carriers should not have any special exemption from the DNC list regulations.

Very truly yours,

/s/ John A. Shaw