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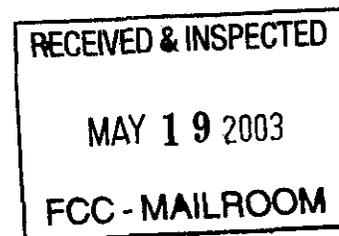
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May 16, 2003

Via United Parcel Service Overnight Mail

Office of the Secretary
United States Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554



**Re: CG Docket No. 02-278, FCC 03-62
Rule Implementing the Telephone Consumer Protection Act of 1991**

Ladies and Gentlemen:

Primerica Financial Services, Inc. ("Primerica") writes to express its concern that differences between the jurisdiction of the Federal Communications Commission ("FCC") and the Federal Trade Commission ("FTC") inadvertently may subject "networking companies," such as Primerica, to certain "Do Not Call" registry requirements under the FCC rule from which they are exempt under the FTC version. That presumably unintended consequence will occur if the FCC adopts verbatim the FTC's broad language in an attempt to comply with the Congressional directive that the FCC's rulemaking achieve "maximum consistency" with the FTC's Telemarketing Sales Rule (the "TSR"). Primerica believes that the FCC will more effectively "maximize consistency" of its proposed regulation with the TSR if it focuses on the effect of the regulation rather on merely adopting similar wording.

Respectfully, we urge the FCC to take into account the FTC's jurisdictional limitations when attempting to achieve the consistency Congress envisioned. As we discuss in this Comment, "maximum consistency" with the FTC's TSR only can be achieved if the FCC (1) adopts the FTC's more narrow definition of "telemarketing" with certain clarifications, (2) confines the reach of its rulemaking to *intrastate* telephone calls, and/or (3) fashions exemptions from the national DNC registry that track the exclusions resulting from the FTC's jurisdictional limitations.

Finally, unless the proper balance is struck between business and consumer interests, there is a grave danger that the FCC's jurisdictional reach effectively will "pull the plug" on legitimate, telephone-dependent businesses which engage in wholly proper networking activities. To achieve this balance, the FCC should further consider specific exemptions allowing sales representatives to arrange face-to-face appointments; follow-up on customer referrals; place any business call in a purely local market; and/or contact persons with whom the representative has prior *personal* relationships.

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1. The Unique Primerica Business Model

Primerica Financial Services is a subsidiary of Citigroup. Founded over twenty-five years ago, Primerica offers term life insurance, mutual funds, variable annuities and loans to “middle Americans.”¹ Having served over six million clients nationwide, Primerica is one of the largest retail distributors of financial products in the United States today.² Primerica is not as well known as its Citigroup affiliates, despite its size, because it has no retail locations and does not engage in any national advertising. Instead, Primerica distributes its products and services through a network of over 100,000 independent licensed representatives nationwide. These representatives sell Primerica products and services to family, friends, personal acquaintances and through referrals from other clients.³ Importantly, many Primerica representatives work from their homes on a part-time basis.⁴

Both full and part time representatives rely almost exclusively on the telephone to contact their network of family, friends, acquaintances and referrals. Despite their depending on the telephone, no Primerica representative sells products over the telephone or otherwise engages in traditional telemarketing activities. Rather, Primerica representatives generally meet with prospective clients “across the kitchen table” in the privacy of their own homes.⁵ In this more comfortable and confidential environment, they deliver a brief educational presentation about financial concepts and offer to prepare a complimentary Financial Needs Analysis called an “FNA.” The FNA is a customized computer analysis of an individual’s financial position in light of their personal financial goals. The data for the FNA is derived from a detailed financial questionnaire that is completed at one of the initial meetings with the prospective client. The generated written computer analysis is delivered to the potential client at a subsequent meeting where the results are explained and discussed and form the basis of needs-based selling.

The Primerica distribution model is uniquely structured to facilitate the distribution of core financial products to middle income Americans, a vastly underserved segment of the population. Generally the size of the transaction and the fees to be charged do not attract the interest of financial planners and traditional broker-dealers. Middle income Americans, therefore, often find themselves underinsured, with too little savings and too much debt. Only by using a distribution network of independent, part-time representatives working from non-retail offices or from home,

¹ Primerica, through its underwriting affiliates, is the industry leader in individual term life. Primerica Life is rated A++ (Superior) by A.M. Best Company, the highest possible financial strength rating. With \$466.8 billion in total in force term life protection, Primerica is the #1 company in individual term life in force.

² In 2002, Primerica’s revenues totaled \$2.1 billion with \$534 million in net income. Total face amount of life insurance in force totaled \$466.8 billion. Mutual fund sales totaled \$3.3 billion and debt consolidation loans increased to \$5.7 billion. Variable annuity sales totaled \$843 million.

³ Primerica representatives also present the benefits of becoming a Primerica representative. An individual desiring to become an independent representative with Primerica submits a written application, goes through a background check, and completes state-mandated coursework, most often in a classroom setting. Upon the completion of these requirements, a prospective representative must pass a state insurance examination and become licensed by the applicable Department of Insurance. After obtaining an insurance license, certain Primerica representatives continue their studies and training and obtain a series 6 NASD mutual fund license and a mortgage broker’s license where applicable. Significantly, although an initial contact with a prospective representative may be by telephone, no “goods or services” are – or can be – offered or sold by telephone.

⁴ Of the over 100,000 representatives in our sales force today, fully 85% are part time. Primerica representatives come from all walks of life and include teachers, policemen, lawyers and housewives.

⁵ Primerica representatives visit more than 300,000 homes each month, meeting “across the kitchen table” with prospective clients.

has Primerica been able to reduce administrative costs so as to permit smaller financial transactions.⁶ Once an initial sale is made, a client generally will register for an automatic debit from a bank account to fund, on a monthly basis, his or her insurance premium, a savings plan or mortgage repayment. If Primerica representatives were forced to establish retail outlets and engage in advertising to generate sales activity, the transactional costs would be too high to allow monthly purchases of financial products in small amounts.

Overly broad "Do Not Call" laws threaten Primerica's model. This vulnerability is counter-intuitive since Primerica representatives do not engage in traditional telemarketing. They never actually sell anything over the telephone nor do they generally ever call people that are complete strangers. Contacts are typically with people they know or those with whom they have a common relationship. Further, because all calls only precede a face-to-face meeting, they are almost never placed beyond an area that is a reasonable travel distance. The narrow geographical calling limits are reinforced by the fact that every representative must also be licensed in each state to sell to that state's residents. As a consequence of this requirement, most calls are only placed within the state where the representative lives, or perhaps one that is contiguous. Finally, Primerica representatives do not use autodialers or other devices to assist them in placing telephone calls, all of which are the hallmarks of the traditional telemarketer.

It is hard to believe that Congress intended to place such small independent businessmen and women on the "endangered species list." Nevertheless, of necessity, Primerica representatives must use the telephone, albeit only as a tool to set up the face-to-face appointments. There is no viable alternative for the telephone in this business model in which the telephone call to arrange a meeting is the low overhead substitute for retail locations and extensive advertising that allows Primerica to serve middle income consumers. It is this limited but necessary use of the telephone, as a socially acceptable means of communicating within a neighborhood circle of family, friends, acquaintances, and referrals, that Primerica is seeking to preserve in filing this comment.

2. The Primerica Business Model is Protected Under the FTC Rule and that Basis of Protection has been Recognized by the FTC and is Consonant with the Purposes of the "Do Not Call" Registry

Undoubtedly cognizant of the exclusions inherent in its jurisdiction, the FTC chose to enact a DNC registry rule with virtually no substantive exemptions. Under the FTC rule, all calls placed pursuant to a "program, plan or campaign" to induce the sale of consumer goods or services must first be checked against the registry. Since the anticipated size of the federal list is estimated to exceed 50 million people, even individual area codes can potentially be comprised of millions of telephone numbers. The burden of checking such a list is especially intimidating and onerous to a small independent businessman like the part-time Primerica representative. The only stated exemptions to the requirements are calls placed to consumers with whom the caller has a pre-existing business relationship and calls placed to solicit for charities.

Fortunately, most calls by Primerica representatives within a reasonable travel distance to set face-to-face appointments are protected from the requirement of checking the national "Do Not Call" registry. The reason for this is not due to a specific exemption. Instead, it is a consequence of the definition of "telemarketing" coupled with the jurisdictional limitations of the FTC. Most calls placed by Primerica representatives are not part of a "program, plan or campaign" of calls. In addition, even in the case of a plan or program, the FTC definition of "telemarketing" does not

⁶ Primerica's average mutual fund sale is only \$70.

include intrastate calls unless the caller makes more than one interstate call. Accordingly, under the amended TSR, as long as the call is placed within a state's boundaries it is protected, regardless of whether or not it is otherwise specifically exempt.

Evidence in the record suggests the FTC consciously considered the protection that its limited jurisdiction accorded certain types of calls in deciding not to allow the kind of exemptions ordinarily seen in state DNC laws.⁷ In the *Federal Register* notice accompanying the release of the amended TSR, for example, the FTC considered the argument of the National Association of Realtors ("NAR") that a real estate salesperson that makes a single call to a consumer should be protected.⁸ The FTC found that the real estate person making occasional calls would not need an additional exemption because the calls were not part of a "program, plan or campaign." The FTC went on to state that even if the real estate agents did engage in calling campaigns, they were in-state calls and thus protected. It was only when the agent "routinely places outbound calls to solicit potential customers in other states" that the calls would, in the aggregate, constitute a "program, plan or campaign" of outbound calls and be subject to the rule. Primerica is asking the FCC to enact a regulation that is consistent with what Primerica believes to be the treatment of Primerica's business model by the FTC under its TSR. The FTC presumably declined to include an exception for calls to arrange face-to-face meeting because it thought its own definitional and jurisdictional limitations effectively protected the small local businesses that would rely on such an exemption.

3. The FCC Should Act to Protect Network Business Models Consonant with the Effect of the FTC Rule and A Fair and Proper Balancing of the Interests Involved

If the FCC adopts identical language to that of the FTC, the result will be to entirely eliminate the ability of any for-profit business to attempt to network for new clients over the telephone from the millions of consumers expected to register. The example given by the FTC of the real estate agent will now also have an unintended and opposite result to the extent that any series of calls, regardless of where they are placed, will be a "program, plan or campaign" and thus subject to the registry requirement. Use of identical language will therefore effectively eliminate any protection for the Primerica business model. This result is not only inconsistent and fundamentally more expansive than the FTC Rule, it does not reflect any balancing of the interests involved. A proper balancing, and one that is consistent with the effect of the FTC Rule, requires instituting protection for a business model like that of Primerica.

The most obvious means of bringing the two rules into substantive alignment is to adopt the FTC definition of "telemarketer," but to clarify that the language "program, plan or campaign" does not include calls placed to set face-to-face appointments where the caller either has a personal relationship with the recipient or obtained the recipient's name pursuant to a referral. By defining telemarketing in this manner, the FCC will ensure that its rule applies to true telemarketing activity

⁷ In the United States, nearly thirty states have enacted a DNC law. Mindful of the adverse consequences of these laws on economic growth, every state has seen fit to include exemptions of one kind or another to protect businesses such as Primerica. Typically, state laws contain exemptions for face-to-face appointments, securities or life licensed individuals, existing business or personal relationships, referrals, or where there is express invitation or permission. Most states allow calls for recruiting purposes only. The "Do Not Call" laws in 26 states and the TSR recognize a variety of exceptions in balancing the purposes of the calls and their intrusiveness to consumers against the potential value to customers or consumers and the damage to the business involved. In weighing these factors, Primerica believes that, like many states and, as a practical matter, like the TSR, the FCC should provide an exception for the networking activities of Primerica and its individual representatives.

⁸ 67 FR at 4655

– repetitive phoning of strangers to market goods and services over the telephone – but not sweep in the legitimate networking activities of independent business representatives.

Another way to achieve the Congressional mandate to “maximize consistency” is to include exemptions that are congruent with the geographical boundaries of the FTC’s rule. The most effective way to achieve this result is to include an exemption for intrastate contacts mirroring the FTC’s jurisdiction. Less preferable, the FCC could include an exemption for calls placed within a reasonable radius from the caller’s home or business, say, a 90-minute drive or a 100-mile radius.⁹ These revisions would preserve the protection given small local businesses, such as Primerica, under the Rule without any erosion of the substantive effect on telemarketers.

Of course, the greatest protection that the FCC can grant to Primerica and others using the same networking calling model is to include a face-to-face exemption in their version of the rule. Every call placed by Primerica representatives is intended to set a face-to-face appointment. In some cases, that meeting may not even be for the purpose of offering financial products but to present the benefits of becoming a Primerica representative. State laws have acknowledged that the fact that no immediate sale is intended adequately protects the consumer’s right to privacy. In addition, the FTC itself has traditionally recognized that face-to-face meetings offer sufficient protection against deceptive practices and applies that exemption in major portions of the amended TSR. We therefore believe that such an exemption in the FCC rule will fairly balance consumer privacy protections against the legitimate interests of business owners who do not engage in a “program, plan or campaign” to place telephone calls to friends, family, acquaintances and referrals.

Primerica is mindful that the FTC considered, but ultimately rejected, a face-to-face exemption under its DNC registry rule. We urge the FCC to reevaluate this position for four basic reasons. First, a study of state DNC laws reveals a growing trend in state legislatures to recognize an exemption for such face-to-face calls.¹⁰ In fact, two state laws that recognize this exemption were enacted **after** the amended TSR was adopted.¹¹ Many states, therefore, do not see calls to arrange face-to-face meetings as the kind of intrusive calls that should be prohibited under a “Do Not Call” law. Second, the more narrow geographical impact and jurisdictional carve outs from the FTC’s rulemaking made a face-to-face exemption less necessary. Since financial services firms, insurance companies, and small businesses placing local calls are not covered by the FTC, it was not necessary for the FTC to balance the interests of these kinds of entities against that of consumer privacy. Had the FTC been required to consider these interests, they might well have considered existing state laws and found that an exemption for calls to arrange face-to-face appointments does strike a proper balance between guarding the privacy of a person’s telephone with allowing its proper commercial use. Since the FCC does have jurisdiction over these types of businesses, it has the greater task of balancing their interests. Third, regulations which fall with particular harshness on a particular type of business deserve special scrutiny and balancing. In this case, those businesses most affected are small businesses that serve an underserved local population. There are many equities on the side of avoiding a significantly adverse effect, in terms of economic viability and administrative burden, on such businesses. Businesses such as Primerica often attract minorities and temporarily out-of-work citizens who have found employment in the retail sector difficult to obtain. Fourth, the FCC should weigh the burden of investigating and enforcing a rule that many small businesses may violate inadvertently. Even with training on the scope of the DNC

⁹ This is especially important for those businesses in Midwestern states where cities are spread apart.

¹⁰ Currently, 13 state “Do Not Call” laws include some form of the face-to-face exemption. Those states include: Alabama, Idaho, Illinois, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New York, Oklahoma, Oregon, South Dakota and Texas.

¹¹ Mississippi and Montana were enacted in April and May, respectively, of this year.

registry, it is not intuitively apparent that a call to a family member or good friend should be screened against such a list.

Finally, the FCC may equalize the effect of its Rule with the TSR by adding exemptions that provide protection to calls placed to individuals with whom there is an ongoing personal relationship or calls placed to referrals. These exemptions will have a similar, but even more narrow substantive protection than a face-to-face exemption. Some states have incorporated these exemptions in their DNC laws.¹² Those states undoubtedly recognized that these types of calls, to personal associates or to referrals, have a personal element that removes them from the scope of purely commercial transactions. These calls are not as violative of consumer privacy but are, instead, most often welcome or at least anticipated. Indeed, consumers adding their telephone numbers to the federal registry may not realize that by doing so, they may also be preventing friends or acquaintances from calling in fear of a violation of federal law. Small businesses that rely on these close personal contacts will be paralyzed by the inability to telephone those individuals. It is hard to imagine this was the intent of the FTC or Congress in developing a national registry.

In conclusion, we believe the FCC will better “maximize consistency” through focus on effect, rather than language. A rule that mirrors the TSR with no additional provision to balance impact on small businesses that primarily place calls to family, friends, acquaintances and in-state referrals who are not customers could devastate those small businesses. The FTC was exempted from this analysis due to the limitations of its jurisdictional reach; the FCC, however, is burdened with the greater task of balancing the interests of small businesses now within the rule’s reach against those of consumers tired of the onslaught of traditional telemarketing calls. We are hopeful that the FCC will achieve this meaningful balance.

We appreciate the opportunity to provide this Comment to the Commission. Should your staff have any questions, please contact me at 770/564-6347, or Suzanne Loomis, Vice President and Assistant General Counsel, at 770/564-6387.

Sincerely,



Peter W. Schneider

¹² Georgia, Minnesota, Missouri and Montana all have exemptions for personal relationships and/or referrals.