



June 6, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W., Room TWB-204
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation in CG Docket No. 02-278

Dear Ms. Dortch:

Yesterday, Kevin Morfield, Thomas J. Noto, and Adam Bass from the Ameriquest Mortgage Company (“Ameriquest”) together with Erik V. Huey and Ronald M. Jacobs of Venable, and Clayton S. Friedman of Baker & McKenzie met with Commissioner Kathleen Q. Abernathy, Matthew A. Brill, and Shannon Torgerson to discuss the Commission’s rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”). During the meeting, Ameriquest discussed the need for the Commission to consider the proper treatment of local calls pursuant to 47 U.S.C. § 227(c)(1)(C).

Ameriquest explained that not all telephone solicitation calls are the same; certain types of calls are fundamentally less intrusive than others. Ameriquest explained that Congress understood this distinction and required the Commission to consider whether even to subject local calls to a national do-not-call list. 47 U.S.C. § 227(c)(1)(C). Ameriquest discussed that based on its experience, consumers are more accepting of those calls that do not require transaction to be completed during the call. As discussed in its other submission to the Commission, Ameriquest proposed that such “face-to-face” calls are a subset of local calls that should be exempted from the do-not-call list.

Ameriquest explained that this subset of calls is the simplest way to define local calls. First, face-to-face calls are inherently local in that there must be some physical presence in order to conduct the actual in-person meeting. This allows sufficient flexibility for areas where individuals are used to longer travel distances. Other definitions of local that utilize specific distances, state lines, or area codes would be arbitrary and would not properly define a local area.

Furthermore, Ameriquest explained that an exemption for face-to-face calls is easy to administer. All the information that a consumer needs to know that the call is

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exempt from the list is intrinsic to the call. For example, a definition of local that relied on the number of calls a person made or that was dependent on the distance from the called party would require extrinsic information. In the case of a distance-based definition, the called party would only be able to verify the location of the caller after the call was completed (e.g., by checking a directory and using a map). In the case of an exemption based on the number of calls being made, the called party would never be able to verify that the call was exempt – the consumer would have to file a complaint and the Commission would have to investigate the caller's telephone records in order to ascertain the number of calls made. Face-to-face calls, on the other hand, require one piece of information that the consumer can ascertain on the call: that the transaction cannot be completed during the call.

Ameriquest discussed that it would be difficult for companies that do not currently utilize a face-to-face method to change their business practices to avail themselves of the exemption. For example, a nation-wide caller that calls from one or two call centers would have to develop a network of offices in order to conduct in-person meetings. Most calls that consumers find intrusive seek full payment during the call; if the caller were to postpone the transaction until a face-to-face meeting, consumers would be less likely to complete the sale. By defining local calls as those calls with a face-to-face component, Ameriquest has proposed a narrow subset of calls that consumers find less intrusive. This proposal is not an exemption that would destroy the benefits of a national do-not-call list to consumers.¹ Companies could not avail themselves of the exemption by stating that the transaction requires an in-person meeting but then offering to complete the transaction over the phone. Only those calls that actually require an in-person meeting would be exempt.

Ameriquest also discussed that the interstate and intrastate distinction is blurred in areas where a community is spread across two or more states. The Federal Trade Commission's rule does not reach intrastate calls but does reach interstate calls. Thus, in those states without a list and those states with exemptions for face-to-face calls, Ameriquest would be able to call within a state but not across state lines. This would be the case even if both the originating state and the called party's state had face-to-face exemptions. Ameriquest explained that most of the states that have adopted do-not-call lists since the time when the FTC created its list have included face-to-face exemptions.

¹ Ameriquest also noted that such face-to-face callers would still be subjected to the TCPA's company-specific do-not-call regime.

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Thus, in order to foster uniformity, to simplify those areas with interstate communities, and to recognize the state exemptions, Ameriquest urged the FCC to include an exemption for face-to-face calls.

Finally, Ameriquest discussed other types of entities that would be covered by the face-to-face exemption. All such callers would be local in nature. The exemption would reach either branch offices serving one community or small businesses with only one facility. Typically, such entities do not produce a high volume of calls and are less likely to use predictive dialers. Similarly, the actual individuals making the calls are often those that conduct the face-to-face transaction (as is the case with Ameriquest) or are those who make calls to schedule services for consumers.

In accordance with sections 1.1206(b)(2) and 1.49(f) of the Commission's rules, a copy of this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

/s/

Erik V. Huey
Ronald M. Jacobs

cc: Commissioner Kathleen Q. Abernathy
Matthew A. Brill, Esq.
Thomas J. Noto, Esq.
Clayton S. Friedman, Esq.