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June 12, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

This letter provides notice that on June 11, 2003, Robert Corn-Revere, counsel for the American Teleservices Association ("ATA"), met with Bryan Tramont, Senior Legal Advisor to Chairman Michael K. Powell, and that on June 12, 2003, Mr. Corn-Revere, along with the undersigned counsel to the ATA, Stuart Discount of Tele-Response Center, Nancy Korzeniewski of InfoCision, and Kathleen Thompson of Bank One, met with Chairman Powell, Mr. Tramont, Jacob Lewis of the FCC Office of General Counsel, and Richard Smith of the Commission's Consumer & Governmental Affairs Bureau.

During the meeting we discussed ATA's position in the above-referenced proceeding as reflected in its comments and summarized in the attached materials. We also provided new information regarding the impact some of the rules under consideration would have on the teleservices industry. If you have any questions regarding the meeting or the attached materials, please contact me.

Very truly yours,

Davis Wright Tremaine LLP

Ronald G. London
Counsel for American
Teleservices Association

STRIKING THE RIGHT BALANCE: ATA ANALYSIS AND RECOMMENDATIONS FOR FCC REVIEW OF TCPA RULES

American Teleservices Association
June 2003

- Introduction to ATA and the Teleservices Industry
- Requirements of the Telephone Consumer Protection Act ("TCPA")
- Requirements of the Do-Not-Call Implementation Act
- The Record Does Not Support Adoption of a National "Do-Not-Call" Registry
- A National "Do-Not-Call" Registry Would Devastate the Teleservices Industry
- A National "Do-Not-Call" Registry Would Violate the First Amendment
- ATA Position and Recommendations
- Selected Exhibits From ATA Comments in CG Docket No. 02-278

Introduction to ATA and the Teleservices Industry

What is ATA?

- The American Teleservices Association ("ATA") was founded in 1983 as the not-for-profit trade association for the teleservices industry.
- ATA represents more than 2,500 teleservices entities, including service agencies, consultants, customer service trainers, and telephone and Internet systems providers, as well as those who rely on teleservices, such as manufacturers, advertisers, retailers, catalogers, non-profit organizations, and financial service providers.
- ATA represents member interests in the lawmaking arena, and educates members, policymakers and the general public on the legal, ethical and professional deployment of teleservices.
- Approximately 75% of ATA members are small businesses under the definition employed by the Small Business Administration.
- The ATA maintains a Code of Ethics demanding that members keep apprised of and comply with applicable state and federal laws and their implementing regulations, that all sales offers be stated clearly and honestly, and that, prior to placing a single call, all telemarketing sales representatives receive training in professional telemarketing, recognized procedures, and proper etiquette.

Telemarketing is a Key Marketing Tool That is Vitally Important to the National Economy

- Telemarketing makes available valuable information on products and services, provides a wider variety of them at lower costs, and offers the convenience of shopping from home.
- Outbound telemarketing is the country's largest direct marketing system, accounting for more than $275 billion in annual revenue from outbound business-to-consumer sales.
- Outbound telemarketing accounted for 4 percent of all consumer sales in 2001 and is expected to grow – if permitted by government to do so – to more than $402 billion by 2006.
- Telemarketing as a whole presently generates more than $600 billion in business-to-business and business-to-consumer sales annually.
- Teleservices play an important role in fostering competition among providers of goods and services, and in particular competition between telecommunications providers.
- The teleservices industry employs more than 5.4 million people, and job growth in the industry has been more than twice the national average, with the teleservices industry providing ideal employment opportunities for single moms, disabled individuals and working students (60% of teleservices sales representatives are women, 25% are working mothers, 33% are minorities, 5% are handicapped, and 10% were reported to be immediately off welfare).
- Congress recognized in adopting the Telephone Consumer Protection Act ("TCPA") that telemarketing provides significant benefits to consumers and sought to protect consumer privacy without unduly hamstringing the teleservices industry.

Requirements of the Telephone Consumer Protection Act ("TCPA")

Statutory and Constitutional Considerations Require that Any Rules Adopted Under the TCPA to Protect Consumer Privacy Must Be Balanced Against the Economic Vitality and First Amendment Rights of the Teleservices Industry

- The TCPA "directs the FCC to balance individual privacy rights, public safety interests, and commercial freedoms of speech and trade," with the expectation that "the Commission issue *regulations that protect subscribers' privacy rights* <u>*without*</u> *intruding unnecessarily and inappropriately on the First Amendment rights of the speaker*." S Rpt. 102-177 at 6.

TCPA Legislative History Shows That Congress Required FCC to Balance These Interests

- Legislation initially proposed a national "do-not-call" database, but was changed to give FCC discretionary authority to address "do-not-call" issues only after full consideration of constitutional and other concerns. S. Rpt. 102-177.
- As enacted, legislation required FCC to consider "electronic databases, telephone network technologies, special directory markings, and industry-based or company-specific 'do-not-call' systems," and directed it to consider "these or any other alternatives, either individually or in combination with others." H. Rep. 102-317.
- Directed FCC to consider technological changes in implementing TCPA. 137 Cong. Rec. S.18784.

The Text of the TCPA Sets Forth the Balancing Requirements

- 47 U.S.C. § 227(c)(1) requires FCC to:
  - Compare and evaluate alternative methods and procedures. including use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific "do not call" systems, and any other alternatives, individually or in combination.
  - Evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures.
  - Consider whether different methods and procedures may apply for local telephone solicitations.
  - Consider whether there is a need for additional authority to further restrict telephone solicitations exempted by TCPA.
  - Develop regulations to implement the methods and procedures the FCC determines are most effective and efficient to accomplish the purposes of Section 227.
- These criteria govern all FCC rulemaking under the TCPA and formalize the statutory and constitutional requirements that regulations must be appropriately balanced.

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The Commission Recognized and Properly Implemented the Required Balancing When It Initially Implemented the TCPA

- Noted that telephone subscribers generally "would like to maintain their ability to choose among those telemarketers from whom they do and do not wish to hear." *TCPA Order*, 7 FCC Rcd 8752, 8761 & n.26 (1992).
- Deemed company-specific do-not-call lists "the most effective alternative to protect residential subscribers from unwanted live and artificial or prerecorded message solicitations." *Id*. at 8757.
- Concluded that the company-specific approach balanced the desire by telephone subscribers to avoid unwanted calls with "the interests of telemarketers in maintaining useful and responsible business practices and of consumers who do wish to receive solicitations." *Id*. at 8757.
- Recognized imprecision of blanket preemptive approach of national "do-not-call" registry, noting various comments indicating national database forces consumers to "make an all or nothing choice: either reject all telemarketing calls, even those which the consumer might wish to receive, or accept all telemarketing calls, including those which the consumer does not wish to receive." *Id*. at 8759.
- Found national "do-not-call" registry's blanket approach would frustrate telephone subscribers wishing to selectively determine the unsolicited calls they wished to entertain, while at the same time disappointing those wishing to block every call in that those who availed themselves of the registry would still receive calls from exempted businesses or organizations. *Id*. at 8758-59, 8761.

Requirements of the Do-Not-Call Implementation Act

Do-Not-Call Implementation Act Does Not Require FCC to Adopt Rules Mirroring FTC's TSR

- Although Implementation Act set a specific date (September 7, 2003) by which the FCC must conclude this rulemaking, it was careful not to require a particular result or to alter the statutory criteria for reaching a decision.
  - Legislative history made clear it is not the intent of the Implementation Act to "dictate the outcome of the FCC's pending rulemaking." H. Rep. 108-8.
  - House Energy and Commerce Committee recognized "the TCPA requires the FCC to consider a variety of factors" in approaching "do-not-call" issues, and emphasized that "[i]t is not the Committee's intent to foreclose consideration of those factors be enacting this legislation." *Id*.
  - Evolution of statutory language confirms FCC is not confined by FTC's prior action:
    - As originally drafted, Section 2 of the bill that became the Implementation Act required that "[n]ot later than 180 days after the enactment of this Act, the Federal Communications Commission shall issue a final rule amending its regulations under the Telephone Consumer Protection Act (47 U.S.C. et seq.), that <u>shall</u> <u>be</u> <u>substantially</u> <u>similar</u> to the rule promulgated by the Federal Trade Commission." Legislative Draft (Jan. 23, 2003).
    - This was changed to require instead that "the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to <u>maximize</u> <u>consistency</u> with the rule promulgated by the Federal Trade Commission." Implementation Act § 3.

Prejudging the Outcome of FCC Rulemaking Cannot Withstand Judicial Review

- *Action for Children's Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991), invalidated legislatively-mandated ban on indecent broadcasts where Congress tried to use appropriations language to direct outcome of ongoing rulemaking proceeding.
  - Vacated FCC decision, holding that "fact that Congress itself mandated the total ban on broadcast indecency does not alter … that … such a prohibition cannot withstand constitutional scrutiny." *Id*. at 1509.
  - Held that "neither the Commission's action … nor the congressional mandate the prompted it can pass constitutional muster." *Id*.
  - Further held that despite "Congress' apparent belief that a total ban on broadcast indecency is constitutional, it is ultimately the judiciary's task, particularly in the First Amendment context, to decide whether Congress has violated the Constitution." *Id*.
- *Meredith Corp. v. FCC*, 809 F.2d 863 (D.C. Cir. 1987), held, where FCC counsel argued "we are not talking law school enforcement, legal textbook arguments; we're talking political reality," that such reasoning is "the very paradigm of arbitrary and capricious administrative action," and that "no precedent … permits a federal agency to ignore a constitutional challenge to the application of its own policy merely because the resolution would be politically awkward." *Id*. at 873-74.

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Nothing in the Implementation Act Relieves FCC of Obligation to Balance Interests Under TCPA

- Congress underscored that the FCC is still "bound by the TCPA," id. at 4, which necessarily includes criteria in 47 U.S.C. §§ 227(c)(1) & (c)(4) which must be satisfied before adopting any rule.
- Congress also recognized that "because the FCC is bound by the TCPA, it is impossible for the FCC to adopt rules identical to the FTC's TSR." H. Rep. 108-8 at 4.
- The TCPA thus continues to require FCC to weigh individual privacy rights, public safety interests, and commercial freedoms of speech and trade, and to adopt regulations that protect subscribers' privacy rights without intruding unnecessarily and inappropriately on First Amendment rights.

The Record Does Not Support Adoption of a National "Do-Not-Call" Registry

Neither the FCC Nor the FTC Can Point to Significant Non-Compliance With Current Do-Not-Call Rules

- In more than ten years since company-specific rules were first imposed, FCC has issued only one public enforcement decision arising out of a company-specific "do-not-call" violation, and even then it found only two telephone solicitations in violation of a prior do-not-call request and a lone failure to provide a do-not-call policy upon demand. *Consumer.Net v. AT&T*, 15 FCC Rcd 281 (1999).
- Since December 1999 FCC Enforcement Bureau issued 205 citations for alleged violations of the TCPA, but only two of these – *i.e.*, only one percent of all of TCPA-related citations for a two-year period – were for alleged failures to honor "do-not-call" requests. *Telemarketing Enforcement Actions Announced* (January 9, 2003).
- ATA analysis of TCPA-related complaints that the FCC made available during comment period shows nearly three quarters relate to issues other than "do-not-call" problems.
- ATA has reviewed over 1,000 telemarketing complaints from FTC, and found that approximately 80 percent relate to issues other than unwanted telemarketing calls.
- Eileen Harrington, FTC Assistant Director of Marketing Practices, testified in 2000 that the FTC "took a look at our own complaint data base and [found] that while we have a lot of complaints about telemarketing, almost all of them concern allegations of fraud. Only about 1 in 10 of the complaints that we have concern unwanted calls." *The Know Your Caller Act of 1999 and the Telemarketing Victim Protection Act of 1999: Hearing on H.R. 3100 and H.R. 3180 Before House Comm. on Commerce Subcomm. on Telecomms., Trade and Consumer Prot.*, 106th Cong. 28 (2000)
- **In recent response to ATA FOIA request, FTC recently revealed that it has had zero cases alleging violations of the company-specific provisions of the TSR.**
- State experience under their "do-not-call" regimes do not reflect significant compliance problems
  - NARUC comments on Commission's Do-Not-Call Implementation Act Further Notice reported that of 4,000 state consumer complaints, only thirteen led to formal actions.
  - Missouri Attorney General reported to FTC that over forty percent of 19,000 complaints received during one year of enforcing do-not-call program did not produce enforcement actions, as about 4,000 involved exempt organizations and an equal number were otherwise unenforceable. FTC Transcript of Amendment to the Telemarketing Sales Rule Forum held June 5, 2002, p. 205-06.
- One staunch anti-telemarketing advocate monitored and logged teleservices calls from all sources during a three-year period and found six calls per month, or just under 1.36 calls per week
- ATA-sponsored survey reported at Exhibit 12 of its comments belies need for national registry:
  - Sample of 1,000 U.S. residents conducted in November 2002 found that only about one-third had availed themselves of the company-specific "do-not-call" protection in the previous year.

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- Of those who asked to have their names placed on a telemarketer's "do-not-call" list, nearly two-thirds reported calls stopped as a result, and another 9.5 percent said that they did not know if they received any subsequent calls – thus, nearly three-quarters of respondents found company-specific lists effective.
- Regarding whether particular types of unsolicited telephone calls are "more acceptable, less acceptable, or no different from other unsolicited calls," 84 percent said that calls from political candidates or promoting a political issue are either less acceptable than (42.9 percent) or no different from (41.1 percent) other unsolicited calls, 81 percent considered calls seeking charitable contributions either less acceptable or no different from other unsolicited calls, and the result for calls from religious organizations was 82 percent, demonstrating that a national "do-not-call" registry will not be successful in meeting consumer preferences.

Developments Since Original TCPA Implementation Militate Against National Registry

- One underlying assumption of TCPA was that federal regulatory action was needed because residential consumers lacked options for blocking annoying telephone calls. S. Rpt. 102-177 at 2.
- Federal policies have evolved to promote e-commerce, telecommunications competition, and other direct services to the home, and economy has experienced overall trend toward a decentralized marketplace using communication technology.
- Section 227(c)(1)(A) requires FCC to compare and evaluate alternative methods and procedures. including, *inter alia* use of telephone network technologies and "other alternatives."
- Technical advances have emerged in the past decade that make teleservices more efficient, while at the same time empowering individual homeowners to exert greater control over the range of calls they receive using new devices and services highlighted in Exhibits 14 & 15 of ATA's comments.

A National "Do-Not-Call" Registry Would Devastate the Teleservices Industry

Comments to FCC Reveal Significant Detrimental Impact Would Arise From a National Registry

- MBNA reported that business from telemarketing has been reduced by 50 percent in states that have "do-not-call" lists. MBNA also noted that "outbound telemarketing group generated $4.3 billion in balance transfers from individuals who failed to respond to prior Direct Mail offers."
- WorldCom reported significant subscribership arising from telemarketing, and that "MCI's local market penetration is up to 60% higher in the states without a state do-not-call list."
- Ameriquest averred that it would be six times more expensive for it to originate loans through "alternative advertising channels" rather than through telemarketing.
- Teleperformance USA, one of the nation's top ten teleservices agencies, demonstrated significant detrimental impact based solely on pending effectiveness of FTC's national "do-not-call" registry:
  - Stated that "FTC rules alone have reversed … historical growth trends of constant … expansion over the past ten years."
  - Reported "adjusted business planning for 2003 and beyond on the basis of reductions in activity between 30-60%."
  - Reported "currently contracting … resources due to direct and anticipated impact of the FTC rules," and indicated that once the FTC rules take full effect "as many as 6,000 employees could have their jobs impacted."
  - *Has already closed four call centers accounting for 850 jobs, and reduced activity at three others accounting for 650 more jobs.*
- A national "do-not-call" registry, coupled with the Commission's existing business relationship (which is part of the FTC's rule and virtually every state regime as well), would undermine FCC's pro-competitive telecommunications policy by helping entrench incumbent LECs and IXCs who may contact their subscribers at will while other carriers are barred from doing so.

Recent Poll of ATA Members Confirms Drastic Impact of "Do-Not-Call" Regimes

- Of those that have responded, 42 percent indicate that they have closed call centers in the last three years as more and more states adopted "do-not-call" regimes and the FTC moved inexorably toward adoption of a national "do-not-call" registry.
  - Reported closures ranged from one to six call centers per company.
  - Another 25 percent reported either outside call centers that put expansion plans on hold due to actual and projected revenue losses, elimination of work shifts or reduced number of work stations, and/or reductions in the number of outside call centers under contract
  - Closed centers tended to be smaller call center operations frequently located in small communities where impact on unemployment rates is disproportionately higher.
    - One company closed a 48-seat call center resulting in a loss of 59 jobs in a town of 7,000.

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  - Reported job losses include both full-time and part-time jobs, which is particularly damaging to those who require flexible employment hours that telemarketing allows.

- Responses indicate significant lost job opportunities arising from "do-not-call" registries.
  - Responding members that closed call centers reported losses ranging from 39 to 1500 jobs.
    - One company closed 6 call centers in four states, eliminating 500 jobs.
    - Several other companies closed 4 call centers each, with a loss of 850, 716 and 2,392 jobs, respectively.
  - Even responding members that did not close call centers reported staff reductions.
    - One company eliminated more than ten percent of its employees at eight call centers.
    - Another company, which closed six of 14 of its call centers, also reduced staff in its remaining call centers ranging from 15 percent to 50 percent of the work force therein.
    - The company reported above that closed 4 call centers also eliminated 1676 positions in its remaining call centers.
  - One major teleservices company projects a loss of 3,000-6,000 jobs when national registry becomes effective, and another projects over 2,500 job losses.
- Respondents reported declining sales revenues in states with "do-not-call" laws.
  - Many major call centers cited internal studies showing revenue declines averaging 20-35 percent in these states, with some individual loss rates of up to 45%.
  - Highest reported loss noted was 70% in Indiana, which has one of the most restrictive regimes.
  - In one case, a study of sales in a state that recently adopted a "do-not-call" registry showed that, in a two-day campaign, 30% of sales made were to consumers later found to be on the registry that took effect the next day.
  - The only respondents not listing revenue losses tended to concentrate in political, charitable, and other exempted telemarketing categories.
  - Despite a slow economy, sales revenues in states without "do-not-call" regimes were either constant or increased for 85% of respondents, with one company reporting a 35% increase in revenues in such states from 2001 to 2002.

A National "Do-Not-Call" Registry Would Violate the First Amendment

The FCC Must Make Independent Inquiry into the Constitutionality of Any New Proposed Rules

- The FCC cannot presume a national "do-not-call" registry would be constitutional simply because Congress gave it the discretion to consider that option. The TCPA and the First Amendment require the Commission to conduct an independent analysis, and any decision to retain or expand restrictions under the TCPA must be supported by the record compiled in this proceeding.
- The Supreme Court has unanimously rejected the notion that the government has greater latitude to regulate certain "disfavored" forms of commercial speech. *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).
- Since TCPA rules were first adopted, the Supreme Court generally strengthened its overall test for protecting commercial speech in *Rubin* and *44 Liquormart*, as well as in cases such as *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993); *Edenfield v. Fane*, 507 U.S. 761 (1993); *Ibanez v. Florida Dept. of Business and Professional Regulation*, 512 U.S. 136 (1994); *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001); and *Thompson v. Western States Med. Ctr.*, 535 U.S. 357 (2002).

It Is Incorrect to Presume the First Amendment Test for Commercial Speech Applies to Any New TCPA Regulations Because the TCPA's "Do-Not-Call" Provisions are Explicitly Content-Based

- The Commission has recognized that exempting calls made for political and charitable solicitation or survey research purposes from regulations applicable to commercial sales calls would raise serious constitutional questions in the absence of significant practical differences between commercial and non-commercial calls. *Unsolicited Telephone Calls*, 77 FCC.2d 1023, 1035 (1980).
- *City of Cincinnati v. Discovery Network* held that the distinction between commercial and noncommercial speech is content-based "by any commonsense understanding of the term," and *Lysaght v. New Jersey*, 837 F. Supp. 646, 648-649 (D. N.J. 1993), found telemarketing restrictions that distinguish between commercial and non-commercial speech to be content-based.
- Strict scrutiny should apply to any national "do-not-call" registry under the TCPA because:
  - Regulating commercial but not non-commercial calls has nothing to do with commerce, but with a perceived ability to impose greater restrictions on some speakers simply because of their status.
  - Imposing "do-not-call" requirements on commercial calls does not promote privacy more than identical restrictions on non-commercial calls.
  - Such proposed restrictions suggest a governmental preference for certain messages over others.
- The Commission may not rely on *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970).
  - The *Rowan* regulations survived only because the individual homeowner was accorded unlimited discretion to choose which unsolicited advertisements to block, and government officials had no power "to make any discretionary evaluation of the material." Rowan, 397 U.S. at 737.

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- The Commission recognized as much in the past, noting that "the Court made clear its reliance upon the fact that it was the householder and not the postmaster who determined what mail was provocative and should not be sent." *Unsolicited Telephone Calls*, 77 F.C.C.2d at 1035.

Even if the Traditional Standard Applicable to Commercial Speech Were Appropriate, a National "Do-Not-Call" Registry Would Violate the First Amendment

- No substantial interest supports adoption of a national "do-not-call" registry – the FCC "cannot satisfy … the *Central Hudson* test by merely asserting a broad interest in privacy" given that privacy is "multi-faceted" and courts will "pay particular attention to attempts by the government to assert privacy as a substantial state interest." *US West v. FCC*, 182 F.3d 1224, 1234-35 (10th Cir. 1999).
- Any adoption of a national "do-not-call" registry must be based upon an on-the-record showing of which types of calls cause a problem with residential privacy, either in terms of their numbers or in their subjective effects. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 563-64 (2001).
- It is "critical" that the FCC cannot satisfy its burden of showing the registry would advance its interest in a direct and material way. *Rubin*, 514 U.S. at 487; *Utah Licensed Beverage Ass'n v. Leavitt*, 256 F.3d 1061, 1070 (10th Cir. 2001). Notably, the burden cannot be met by "mere speculation and conjecture." *Edenfield*, 507 U.S. at 770-71.
  - A national "do-not-call" registry will not affect calls from political, charitable, or religious organizations, or non-commercial calls such as surveys or polling calls, and would also apply differently to certain commercial callers, depending on their relationship with the consumer.
  - Since the record shows that there is no difference to the consumer, in terms of the impact on privacy, between exempt and non-exempt calls, the national registry approach must fail, because uneven or inconsistent restrictions on commercial speech are especially suspect under *Rubin, Greater New Orleans, Utah Licensed Beverage*, and similar cases.
- The national "do-not-call" registry also fails the *Central Hudson* test, because it burdens more speech than necessary and there is an insufficient "fit" between the rule's means and its ends.
  - A national registry is unconstitutional because it would significantly affect commercial speech while less restrictive measures exist to give subscribers control over unwanted calls, including services offered by telephone companies, consumer electronic devices, professional association self-regulatory approaches, and thus-far unexplored enforcement and consumer education efforts to bolster company-specific "do-not-call" rules.
  - A national registry would be unconstitutional because of the devastating impact it will have on the teleservices industry. *Lorillard Tobacco*, 533 U.S. at 525.

ATA Position and Recommendations

ATA Does Not Oppose Reasonable Limits on Telemarketing or FCC Review of its TCPA Rules

- ATA, along with the rest of the teleservices industry, supported the company-specific approach at the time it was adopted, was already generally following a time-of-day restriction even before the FCC adopted such rules.
- ATA agrees as a general proposition that there have been many changes during the past ten years that warrant the current review of the rules implementing the Telephone Consumer Protection Act ("TCPA"), including advances in consumer options to avoid unwanted telephone calls, adoption of state laws and regulations governing telemarketing, and increased protection for commercial speech.

Recommendations in ATA's Comments and Reply Comments

- Eschew adopting a national "do-not-call" registry as unsupported by the record, violative of telemarketer First Amendment rights, and unduly burdensome on the teleservices industry.
- Retain company-specific "do-not-call" requirements, but with a two-year retention period rather than the ten-year period adopted on reconsideration absent record evidence in 1995.
- Bolster the effectiveness of company-specific lists through consumer education, facilitating customer sign-up and verification.
- Retain the current "established business relationship" definition and time-of-day restrictions.
- Confirm exclusive FCC authority over interstate telemarketing calls and predictive dialers.
  - The FCC has exclusive jurisdiction over interstate telemarketing
    - Virtually all state commenters reflected an intent or practice of enforcing state telemarketing laws against teleservices calls made across state lines.
    - The FCC staff has already conducted and set out proper analysis of FCC jurisdiction on interstate telemarketing and bar on state regulation thereof.
  - Predictive dialers are customer premises equipment ("CPE") over which the Communications Act gives the FCC exclusive jurisdiction.
    - Exclusive FCC jurisdiction over predictive dialers is mandated by 47 U.S.C. § 153(14), and *Telerent Leasing Corp.*, 45 F.C.C.2d 204 (1974), and *North Carolina Util. Comm'n. v. FCC*, 537 F.2d 787 (4th Cir. 1976), and their progeny.
    - States that have moved toward regulation of abandoned call rates and FTC all lack expertise of FCC with respect to use and regulation of CPE.
- Refrain from adopting an abandoned call rate or, if a rate is adopted, nothing lower than 5%.
- Place wireline and wireless subscribers on equal footing consistent with move toward competition for telecommunications services and wireline-wireless competition FCC has fostered in recent years.
- Extend the informal complaint rules to telemarketing complaints.

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ATA's Recommendations Are Consistent with the Do-Not-Call Implementation Act's Mandate for the FCC to "Maximize Consistency" with FTC Amendments to the Telemarketing Sales Rule

- Declining to replicate the FTC's "do-not-call" registry is not inconsistent with and does not impair or confuse the operation of the FTC registry. It would preserve the constitutional balance embodied by Section 227(c)(1) and maintain the equilibrium between individual privacy rights and legitimate telemarketing activities struck by company-specific lists.
- Retaining company-specific lists, established business relationships, and the time-of-day restrictions is wholly consistent with corresponding provisions in the FTC's rules.
- Asserting exclusive jurisdiction over interstate telemarketing calls is consistent with the FTC's distinction between interstate and intrastate telemarketing calls.
- Asserting exclusive FCC jurisdiction over predictive dialers is mandated by 47 U.S.C. § 153(14), *Telerent Leasing Corp.*, and *North Carolina Util. Comm'n. v. FCC*, etc.
  - As the expert agency, FCC rules should exclusively govern operation of telecommunications equipment.
  - The FTC stayed its predictive dialer rules, first partially then in full, due to problems experienced by the industry in trying to comply with them.
- Applying rules to wireline and wireless carriers equally parallels FTC statements that its rules apply to any call placed to a customer, whether to a residential telephone number or to the customer's cellular telephone or pager.

Tim Searcy, Executive Director, American Teleservices Association. The American Teleservices Association ("ATA") was founded in 1983 as the not-for-profit trade association for the teleservices industry. It boasts more than 2,500 teleservices entities, including service agencies, consultants, customer service trainers, and telephone and Internet systems providers, as well as those who rely on teleservices, such as manufacturers, advertisers, retailers, catalogers, non-profit organizations, and financial service providers. ATA represents its members' interests in the lawmaking arena, and educates members, policymakers and the general public on the legal, ethical and professional deployment of teleservices.

Stuart Discount, President/CEO, Tele-Response Center Inc. Tele-Response Center is an outbound service agency that services the non-profit industry and the banking industry. Corporate offices are in Philadelphia, with call centers in Parkersburg and Weston, WV. Tele-Response Center has 400 employees and 300 outbound stations. As President/CEO Mr. Discount is responsible for the growth of the company and the daily oversight of the operations.

Nancy Korzeniewski, Director Inbound Operations, InfoCision. InfoCision is a marketing consulting company that is expert in strategizing, designing, and implementing a full spectrum of teleservice applications. InfoCision is the amalgamation of the words "INFOrmation" and "deCISION". Ms. Korzeniewski's job is to work with clients to make sure that InfoCision handles all of their inbound needs seamlessly. This starts with initial campaign set up with our long distance provider, to training call center personnel to handle calls, and finally to ACD reporting.

Kathleen B. Thompson, Senior Vice President, Marketing, Bank One. Bank One Card Services uses both internal staff as well as vendors to accomplish the myriad of marketing programs we do every year. Ms. Thompson manages the telephone, on-line and event marketing campaigns for all of Bank One Card Services that include marketing programs to acquire new customers and to retain our 40 million existing customers.

Robert Corn-Revere and Ronald G. London, Davis Wright Tremaine, LLP. Messrs. Corn-Revere and London are counsel for the American Teleservices Association.