

ORIGINAL

May 30, 2003

BY HAND

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Consumer and Governmental Affairs Bureau
Federal Communications Commission
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MAY 30 2003

Federal Communication Commission
~~Bureau / Office~~ of *Secretary*

RE: In the Matter of Amendments to the Telephone Consumer Protection Act, CG Dkt. No. 02-278

Dear Mr. Snowden:

You and/or members of your staff asked several questions during our May 7, 2003 meeting in your offices on behalf of our client, Vector Marketing Corporation ("Vector"), which we promised to look into and answer at a later time. This letter is intended to answer those questions.

As you no doubt recall, Vector is the North American marketing arm of Cutco Cutlery, which manufactures high-quality cutlery products in Olean, New York. Vector has been marketing Cutco's products through direct selling – *i.e.*, through in-home presentations performed by independent sales representatives (mostly college students) – for more than 30 years. Although Vector's reps, with their method of referral-based selling, are simply not part of the problem that the Commission is seeking to address, the government's solution to the problem would sweep companies like Vector into its broad net, and would cause immediate and irreparable harm to Vector's business.

Therefore, in our comments and reply comments in this proceeding, Vector has sought a limited exemption from the rule's broad sweep. In furtherance of our request, we provided specific language for the staff's consideration.

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The language we propose would exclude from the definition of "telephone solicitation" a call: ". . . [b]y an individual direct seller who calls no more than 20 personal referrals per day."¹

During our meeting, you asked us how we arrived at the number "20."

Vector's internal sales data shows that the company has a telephone call-to-appointment "close rate" of approximately 50%.² In-home presentations generally take about an hour to complete. Vector's better reps can make about 5-6 presentations in the course of a day, if time between presentations for breaks, meals and transportation is included. Given a 50% phone call-to-appointment close rate, it would take about 10 phone calls to set up those 5-6 appointments. We doubled that number to provide a comfortable margin for Vector and its reps,³ and others who might be similarly situated, while still setting the number sufficiently low as to exclude anyone whose use of the telephone is such that it would be a real intrusion on the privacy of others.

You also asked us about Vector's revenues from direct selling. Substantially all of Vector's sales come from direct selling (see discussion of catalog sales, below). The company's system for sales through personal referrals is one of Vector's hallmarks, and is the subject of several case studies and course materials used in the business programs of several well-known colleges and universities around the country, including Purdue, Boston College and the University of Texas. Vector's average annual sales are approximately \$250 million, as we stated in our initial comments in this proceeding.⁴

Additionally, you asked us about the Company's method of follow-up with its customers, and, specifically, whether the company follows up by phone. Vector does not follow up with its customers by phone for the purpose of further sales. The company may call a customer if there is a problem with an order, a specific question from a customer, or other customer-service related reason. The only

¹ The suggested language also defines a *direct seller* as "an individual who does not complete the sale of goods or services, and does not require payment or authorization of payment for such goods or services, until after the seller has actually made a complete face-to-face sales presentation." The term *personal referrals* is defined as "those individuals who are either known personally to the direct seller or who are referred to the direct seller by someone personally known to the referring source."

² See *Comments of Vector Marketing Corporation*, filed Dec. 9, 2002, at 6-8 (hereinafter *Comments*) (discussing close rates for Vector in relation to close rates for telemarketers, and stating at fn. 12: "Each Vector representative makes approximately 1.9 telephone calls for each sales appointment made, and generally makes two in-home presentations for each completed sale.").

³ A Vector representative working at maximum production (*i.e.*, making 5-6 presentations per day) shouldn't need to make more than 10-12 calls per day to set up those appointments.

⁴ See *Comments* at 6, n.10.

follow-up selling in which the company engages is the mailing of a catalog once or twice per year (the company has recently decided to cancel its Spring catalog to resolve complaints from its reps about "channel conflict," and presently issues only a Fall catalog). The company operates a call center in connection with its catalog sales, but the call center takes inbound calls only: it does not make outbound calls.

Finally, we want to provide you with one additional bit of information growing out of Vector's experience in Wisconsin (one of the states which recently implemented a statewide do-not-call list without any protections/exemptions for companies such as Vector). Vector's examination of what has happened in Wisconsin, we believe, not only is illustrative of the dire consequences that Vector would face nationwide if no exemption were created by the FCC, but also demonstrates the unnecessarily extensive infringement of commercial free speech that would be created by an overbroad rule.

The State of Wisconsin began signing up consumers for its "No Call List" in September, 2002. The law took effect January 1, 2003. During all of calendar year 2002, 9,132 Wisconsin consumers *purchased* Cutco knives from Vector's reps. Of those same purchasers, 4,757 – fully 52.1 percent – signed up for Wisconsin's No Call List.

Had Wisconsin's No Call List been in effect in 2002, Vector's sales in Wisconsin would have been slashed by more than half, because Vector's reps would have been precluded from calling 52.1% of the people who *ultimately purchased* Cutco products – including, as we discussed in our meeting, friends, relatives and other personal referrals whose numbers would have been on the list. A sudden reduction in annual sales of more than 50% is an economic blow from which few businesses can recover. If the Wisconsin experience is repeated nationwide, Vector will not be able to survive.

Moreover, the consumers who were eagerly awaiting their chance to sign up (or, in fact, were eagerly signing up) for Wisconsin's No Call List were doing so *at the same time* as they were making appointments with Vector's reps and buying Cutco knives. This is a strong indication that the very people who were seeking to avoid being plagued by telemarketing calls *did not object to the calls they received from Vector's reps*.

The government's stated interest in promulgating a national do-not-call list is to protect consumer's privacy right not to receive calls "to which they object."⁵ But if the rule that is promulgated is more extensive than necessary to directly advance the government's stated interest, it cannot stand under the fourth prong of the *Central Hudson* test, as we also discussed. Calls from Vector's reps, made only to friends, family members and other personal referrals, simply are not the objectionable calls that the government is seeking to curtail. A rule that would sweep Vector's reps into its broad net, and sweep away Vector's business, is more extensive than necessary to advance the government's stated interest, and is therefore, indeed, too broad.

We trust you will find these responses helpful. If you would like further information about the company or about the specific exemption we are seeking, please do not hesitate to contact us. Again, we

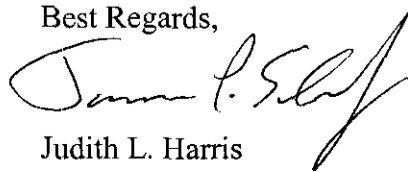
⁵ 47 U.S.C. §227(c)(1).

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want to thank you for meeting with us, and for considering the truly unique problems that the implementation of a Do-Not-Call list will cause for Vector.

Best Regards,



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