

**Appendix A****Final Rules**

Part 64 of the Code of Federal Regulations is amended as follows:

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. Authority: 47 U.S.C. § 227.

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2. Subpart L is amended by revising the Subpart Heading to read as follows:

**Subpart L – Restrictions on Telemarketing and Telephone Solicitation**

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3. Section 64.1200 is revised to read as follows:

**§ 64.1200 Delivery restrictions.**

(a) No person or entity may:

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call:

(i) Is made for emergency purposes,

(ii) Is not made for a commercial purpose,

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation,

- (iv) Is made to any person with whom the caller has an established business relationship at the time the call is made, or
- (v) Is made by or on behalf of a tax-exempt nonprofit organization.
- (3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
- (i) For purposes of paragraph (a)(3) of this section, a facsimile advertisement is not “unsolicited” if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient’s consent to receive such facsimile advertisements from the sender.
- (ii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.
- (4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.
- (5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.
- (6) Abandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. A call is “abandoned” if it is not connected to a live sales representative within two (2) seconds of the called person’s completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person’s completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for “telemarketing purposes.” The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.
- (i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person’s completed greeting.
- (ii) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by paragraph (a)(6) of this section.
- (7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section, to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) it can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;

(B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and

(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any

arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller

and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in sections 64.1200(c) and 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) As used in this section:

(1) The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(3) The term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(4) The term facsimile broadcaster means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(5) The term seller means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(6) The term telemarketer means the person or entity that initiates a telephone call or message

for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(7) The term telemarketing means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term telephone facsimile machine means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(9) The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

- (i) To any person with that person's prior express invitation or permission.
- (ii) To any person with whom the caller has an established business relationship; or
- (iii) By or on behalf of a tax-exempt nonprofit organization.

(10) The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(11) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 C.F.R. § 64.1200 and 16 C.F.R. Part 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or

listing system maintained by such State for the regulation of telephone solicitations.

§ 64.1601 Delivery requirements and privacy restrictions.

4. Section 64.1601 is amended by adding paragraph (e) to read as follows:

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(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(7) must transmit caller identification information.

(i) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.

(ii) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(iii) Tax-exempt nonprofit organizations are not required to comply with this paragraph.

§ 68.318 Additional limitations.

5. Section 68.318 is amended by revising (d) to read as follows:

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(d) Telephone facsimile machines; Identification of the sender of the message. It shall be unlawful for person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. If a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with the sender's name. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted page.

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## Appendix B

**FINAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>793</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Memorandum Opinion and Order<sup>794</sup> (2002 Notice) released by the Federal Communications Commission (Commission) on September 18, 2002. The Commission sought written public comments on the proposals contained in the 2002 Notice, including comments on the IRFA. On March 25, 2003, the Commission released a Further Notice of Proposed Rulemaking (Further Notice), seeking comments on the requirements contained in the Do-Not-Call Implementation Act (Do-Not-Call Act),<sup>795</sup> which was signed into law on March 11, 2003.<sup>796</sup> None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>797</sup>

**A. Need for, and Objectives of, the Order**

2. Since 1992, when the Commission adopted rules pursuant to the Telephone Consumer Protection Act (TCPA),<sup>798</sup> telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make marketing using telephones and facsimile machines more cost-effective. At the same time, these new telemarketing techniques have heightened public concern about the effect telemarketing has on consumer privacy. A growing number of states have passed, or are considering, legislation to establish statewide do-not-call lists, and the Federal Trade Commission (FTC) has decided to establish a national do-not-call registry.<sup>799</sup> Congress provided in the TCPA that "individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing

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<sup>793</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>794</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (MO&O), 17 FCC Rcd 17459, CG Docket No. 02-278 and CC Docket No. 92-90. In the MO&O, the Commission closed and terminated CC Docket No. 92-90 and opened a new docket to address the issues raised in this proceeding.

<sup>795</sup> Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), to be codified at 15 U.S.C. § 1601.

<sup>796</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Further Notice of Proposed Rulemaking, 68 Fed. Reg. 16250 (March 25, 2003).

<sup>797</sup> See 5 U.S.C. § 604.

<sup>798</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

<sup>799</sup> See *Telemarketing Sales Rule*, 68 Fed. Reg. 4580 (Jan. 29, 2003).

practices.”<sup>800</sup>

3. The 2002 Notice sought comments on whether to revise or clarify Commission rules governing unwanted telephone solicitations, the use of automatic telephone dialing systems, prerecorded or artificial voice messages, telephone facsimile machines, the effectiveness of company-specific do-not-call lists, and the appropriateness of establishing a national do-not-call list. In addition, in the IRFA, the Commission sought comments on the effect the proposed policies and rules would have on small business entities.<sup>801</sup>

4. In this Report and Order (Order) the Commission revises the current TCPA rules and adopts new rules to provide consumers with additional options for avoiding unwanted telephone solicitations. We establish a national do-not-call registry for consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry will supplement the current company-specific do-not-call rules, which will continue to permit consumers to request that particular companies not call them. The Commission also adopts a new provision to permit consumers registered with the national do-not-call list to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the “do-not-call” requirements nonprofit organizations and companies with whom consumers have an established business relationship. The definition of “established business relationship” has been amended so that it is limited to 18 months from any purchase or financial transaction with the company and to three months from any inquiry or application from the consumer. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five years. We retain the current calling time restrictions of 8:00 a.m. until 9:00 p.m.

5. To address the use of predictive dialers, we have determined that a telemarketer must abandon no more than three percent of calls answered by a person, must deliver a prerecorded identification message when abandoning a call, and must allow the telephone to ring for 15 seconds or four rings before disconnecting an unanswered call. The new rules also require all companies conducting telemarketing to transmit caller identification information when available, and they prohibit companies from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited facsimile advertisement. We find that the permission to send fax ads must be in writing, include the recipient’s signature, and clearly indicate the recipient’s consent to receive such ads. In addition, we have clarified when fax broadcasters are liable for the transmission of unlawful fax advertisements.

6. We believe the rules the Commission adopts in the Order strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers. In addition, the Commission must comply with the Do-Not-Call Act, which requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation. This report is to include: (1) an analysis of the effectiveness of the registry; (2) the number of consumers included on the registry; (3) the number of persons accessing the registry and the fees collected

<sup>800</sup> See TCPA, Section 2(9), reprinted in 7 FCC Rcd 2736 at 2744.

<sup>801</sup> 2002 Notice, 17 FCC Rcd at 17497-501, paras. 70-80.

for such access; (4) a description of coordination with state do-not-call registries; and, lastly, (5) a description of coordination of the registry with the Commission's enforcement efforts.<sup>802</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

7. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities. Telemarketers maintained that "telemarketing is used to introduce consumers to novel and competitive products and services,"<sup>803</sup> often offered by small businesses.<sup>804</sup> Some commenters insisted that business-to-business telemarketing is essential for small businesses.<sup>805</sup> They indicated that they rely on fax broadcasting as a cost-effective form of advertising.<sup>806</sup> On the other hand, other small businesses have requested that the Commission allow their telephone numbers to be included on any national do-not-call list<sup>807</sup> and urged the Commission to adopt rules protecting them from unsolicited faxes.<sup>808</sup> The rules adopted herein reflect not only the difficult balancing of individuals' privacy rights against the protections afforded commercial speech, but the difficult balancing of the interests of small businesses that rely on telemarketing against those that are harmed by unwanted telephone calls and facsimile transmissions. The amended rules should reduce burdens on both consumers and businesses, including small businesses.

8. National Do-Not-Call List. As discussed more extensively in the Order,<sup>809</sup> some commenters opposed the adoption of a national do-not-call registry, stating that company-specific do-not-call lists adequately protect consumer privacy.<sup>810</sup> Other commenters supported the establishment of a national do-not-call registry, arguing that "further regulation is needed because the current system does little or nothing to protect privacy in the home."<sup>811</sup> NFIB "believes that significant burdens are being placed upon businesses of all sizes in order to comply with the regulations. . . , but that small businesses bear the brunt of those burdens."<sup>812</sup> NFIB

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<sup>802</sup> See Do-Not-Call Act, Sec. 4(b).

<sup>803</sup> WorldCom Reply Comments at 2.

<sup>804</sup> NEMA Comments at 8; PLP Comments at 1.

<sup>805</sup> See e.g., Yellow Pages Comments at 2.

<sup>806</sup> NADA Comments at 2-3.

<sup>807</sup> John Shaw Reply Comments at 10; Mathemaesthetics Comments at 6; Gail Berk Comments.

<sup>808</sup> John Holcomb Comments at 1; Jim Carter Comments.

<sup>809</sup> Order, paras. 21, 88.

<sup>810</sup> See e.g., MBNA Comments at 4.

<sup>811</sup> See e.g., Privacy Rights at 2.

<sup>812</sup> NFIB Comments at 1. See also, PLP Comments at 4; NEMA Comments at 8.

suggested that women, minorities and small businesses will be affected disproportionately by any new restrictions.<sup>813</sup> And, some commenters maintained that businesses, including small businesses, will suffer a reduction in telemarketing sales as a result of the establishment of a national do-not-call list.<sup>814</sup> SBSC, while opposed to a national do-not-call list, nevertheless offered a recommendation that would make such a list less onerous for small businesses. SBSC suggested exempting local calls that might result in a face-to-face transaction from the do-not-call list requirements.<sup>815</sup> NAIFA also encouraged exempting calls which result in face-to-face meetings and recommended an exemption for those businesses that make a *de minimus* number of calls.<sup>816</sup>

9. The Commission received comments arguing that a national do-not-call list “would be cumbersome”<sup>817</sup> and too expensive for small businesses to use.<sup>818</sup> DSA specifically indicated that a national do-not-call list would increase businesses’ start-up costs if they were required to purchase the list.<sup>819</sup> In addition, MBA maintained that many small lenders use referrals from existing customers, not large lists, to attract new business. Such referrals, MBA suggested, will be difficult to scrub against a national do-not-call list.<sup>820</sup> Some commenters suggested that an option to help reduce the cost of a national do-not-call list for small businesses would be to offer smaller pieces of the list to small businesses.<sup>821</sup>

10. Yellow Pages urged the Commission to continue to exempt business-to-business calls from a national do-not-call list, because small businesses benefit tremendously by advertising in yellow pages and on-line.<sup>822</sup> However, other commenters requested that small businesses be allowed to include their telephone numbers on the national do-not-call list.<sup>823</sup> One small business commenter stated that “. . . telemarketing . . . interferes with business operations, especially small business operations . . . .”<sup>824</sup> Another commenter argued that “people that work

<sup>813</sup> MBNA Comments at 3; MBNA Reply at 7.

<sup>814</sup> MBNA Comments at 3.

<sup>815</sup> SBSC Comments at 2-3. *See also*, PLP Comments at 4-5; MBA Reply at 5-6; Farmers Comments at 1.

<sup>816</sup> NAIFA Comments at 3-4. *See also*, DSA Comments at 6-7 and Vector Comments at 8-10.

<sup>817</sup> NAMB Comments at 2; NRF Comments at 9-10.

<sup>818</sup> MBA Comments at 3.

<sup>819</sup> DSA Comments at 4-5. *See also*, NAA Comments at 10-11.

<sup>820</sup> MBA Comments at 3. *See also*, MPA Comments at 10-11 (“small businesses will be daunted by or unable to afford the computer processing time and expense involved in ‘scrubbing’ their relatively small marketing lists against a [national list]”); *see also* NRF Comments at 9.

<sup>821</sup> Strang Reply Comments at 12. *See also* Joe W. McDaniel-First Dec 4, 2002 Comments.

<sup>822</sup> Yellow Pages Comments at 2-4.

<sup>823</sup> Mathemaesthetics Comments at 6.

<sup>824</sup> Mathemaesthetics Comments at 6.

from home . . . should not have to be bothered with telemarketing calls that would impact their job performance and potentially their ability to make a living.”<sup>825</sup> Finally, some have assured the Commission that a national do-not-call list would be manageable and feasible to maintain.<sup>826</sup> NCS, for example, maintained that even extremely small telemarketers could gain access to the do-not-call list at a reasonable cost using the Internet.<sup>827</sup>

11. Website or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests. The Commission sought comment on whether to consider any modifications that would allow consumers greater flexibility to register on company-specific do-not-call lists.<sup>828</sup> We specifically asked whether companies should be required to provide a toll-free number and/or website that consumers can access to register their names on do-not-call lists.<sup>829</sup> Some commenters argued that it would be costly if small, local businesses were required to design and maintain websites or provide toll-free numbers for consumers to make do-not-call requests.<sup>830</sup> In addition, they maintained that businesses should not be required to confirm registration of a consumer’s name on a company’s do-not-call list.<sup>831</sup> Confirmations by mail, they stated, would be expensive for a business and probably perceived by the consumer as “junk mail.”<sup>832</sup>

12. Established Business Relationship. One issue raised by commenters as particularly burdensome for small business was monitoring existing business relationships and do-not-call requests. NFIB stated that members have found requests by existing customers to cease contacting them “unwieldy and difficult . . . to translate as a business practice.”<sup>833</sup> “An individual who continues to interact with a [sic] these small businesses following a ‘do not contact’ request does not sever the business relationship *de facto*. . .”<sup>834</sup> According to NFIB, it should be the right of the business to continue to call that customer. They argued that it should be the responsibility of the customer to terminate the relationship with that business affirmatively.<sup>835</sup>

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<sup>825</sup> David T. Piekarski Comments (Docket No. 03-62) at 1-2.

<sup>826</sup> NCS Comments at 4-5. *See also*, Mathemaesthetics Comments at 7-8.

<sup>827</sup> NCS Comments at 5.

<sup>828</sup> 2002 Notice, 17 FCC Rcd at 17470-71, para. 17.

<sup>829</sup> 2002 Notice, 17 FCC Rcd at 17470-71, para. 17.

<sup>830</sup> MBA Comments at 6.

<sup>831</sup> MBA Comments at 6-7.

<sup>832</sup> MBA Comments at 6-7.

<sup>833</sup> NFIB Comments at 2.

<sup>834</sup> NFIB Comments at 2.

<sup>835</sup> NFIB Comments at 2.

13. NADA indicated that there has been no significant change that would warrant a revision of the established business relationship exemption.<sup>836</sup> In fact, NADA stated that “narrowing the exemption would unnecessarily deprive small businesses of a cost-effective marketing opportunity.”<sup>837</sup> According to NADA, small businesses must maximize their marketing resources and the best way to do so is to direct their marketing efforts toward their existing customers.<sup>838</sup>

14. While no commenter specifically addressed the effect of time limits on small businesses, several entities discussed time limits for the established business relationship rule in general.<sup>839</sup> DMA indicated the difficulty in establishing a “clock” that “will apply across all the industries that use the phone to relate to their customers.”<sup>840</sup> DMA continued by stating “[d]ifferent business models require different periods of time.”<sup>841</sup> This concept was supported by Nextel, “the FTC’s eighteen-month limit on its EBR rule would be inappropriate for the telecommunications industry” and would “dramatically increase administrative burdens and costs for all businesses as they would be forced to monitor and record every customer inquiry and purchasing pattern to ensure compliance with the FCC’s rules.”<sup>842</sup>

15. Unsolicited Facsimile Advertising and “War Dialing”. Privacy Rights commented that the practice of dialing large blocks of numbers to identify facsimile lines, *i.e.*, “war dialing,” should be prohibited, especially because such calls cannot be characterized as telemarketing.<sup>843</sup> It argued that “this practice is particularly troubling for small business owners who often work out of home offices” because it deprives the small business owner of the use of the equipment, creates an annoyance and interrupts business calls.<sup>844</sup>

16. NFIB advocated on behalf of its small business members that “the ability to fax information to their established customers is an essential commercial tool.”<sup>845</sup> Any customer who provides contact information when patronizing a business is providing express permission to be contacted by that business, including via facsimile advertising.<sup>846</sup> In addition, NFIB

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<sup>836</sup> NADA Comments at 2.

<sup>837</sup> NADA Comments at 2.

<sup>838</sup> NADA Comments at 2.

<sup>839</sup> *See, e.g.*, NASUCA Comments at 17-18; DMA Comments at 20-21; Nextel Reply Comments at 11-13.

<sup>840</sup> DMA Comments at 20.

<sup>841</sup> DMA Comments at 20.

<sup>842</sup> Nextel Reply Comments 12-13.

<sup>843</sup> Privacy Rights Comments at 4-5.

<sup>844</sup> Privacy Rights Comments at 4-5.

<sup>845</sup> NFIB Comments at 3-4. *See also*, NADA Comments at 2-3.

<sup>846</sup> NFIB Comments at 3-4.

indicated that businesses engaged in facsimile advertising should not be required to identify themselves, and that customers should be required to notify the business that they do not wish to receive such faxes.<sup>847</sup> NADA agreed that the Commission should “preserve its determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive fax advertisements.”<sup>848</sup> According to NADA, changing these rules would deprive small businesses of a marketing tool upon which they have come to rely.<sup>849</sup>

17. Other commenters disagreed, explaining that numerous small businesses are burdened by the intrusion of ringing telephones and fax machines,<sup>850</sup> the receipt of advertisements in which they are not interested,<sup>851</sup> the depletion of toner and paper,<sup>852</sup> and the time spent dealing with these unwanted faxes.<sup>853</sup> A few home-based businesses and other companies maintain that facsimile advertisements interfere with the receipt of faxes connected to their own business, and that the time spent collecting and sorting these faxes increases their labor costs.<sup>854</sup> In fact, NFIB has received complaints from its own members “who . . . failed to realize that their membership entitles them to the receipt of such information via fax.”<sup>855</sup>

18. Caller ID Requirements. In response to the Commission’s proposal to require telemarketers to transmit caller ID or prohibit the blocking of such information, NYSCPB favored prohibiting the intentional blocking of caller ID information, but acknowledged that requiring the transmission of caller ID may be inappropriate for smaller firms.<sup>856</sup> NYSCPB stated that “[w]hile mandatory transmission of caller ID information would undoubtedly facilitate do-not-call enforcement . . . we would not want to impose onerous burdens on smaller, less

<sup>847</sup> NFIB Comments at 3-4. *But see*, Mathemaesthetics Comments at 2-5.

<sup>848</sup> NADA Comments at 2.

<sup>849</sup> NADA Comments at 2.

<sup>850</sup> Mathemaesthetics Comments at 2.

<sup>851</sup> Jeff Bryson Comments; Carolyn Capps Comments at 2.

<sup>852</sup> Michael C. Addison Comments.

<sup>853</sup> John Holcomb Comments at 1.

<sup>854</sup> Jim Carter Comments; JC Homola Comments; Autofiex Comments at 1-2; Rob McNeal Comments (unsolicited faxes costs company tens of thousands of dollars each year in materials and employee time); *see also* NCL Comments at 6 (“[P]eople who work out of their homes are especially harmed by unsolicited faxes, which use up their paper and toner and tie up their machines.”); Mathemaesthetics Reply Comments at 7 (“[U]nsolicited [fax] ads caused my business fax machine to become prematurely empty, which rendered *wholly useless* the equipment my small business crucially depends on for its revenue. When a customer of mine a short time later attempted to fax a purchase order for over \$3,000 worth of my company’s product, my empty fax machine was not able to capture this transaction for a significant period of time . . . .” (emphasis in original)).

<sup>855</sup> NFIB Comments at 2 (emphasis added).

<sup>856</sup> NYSCPB-Other Than National DNC List Comments at 9-10.

technically sophisticated firms . . . .”<sup>857</sup> In addition, NYSCPB suggested that smaller businesses that lack the capability to transmit caller ID be exempt from providing caller ID information until the business installs new equipment with caller ID capabilities.<sup>858</sup>

### C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>859</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>860</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>861</sup> Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>862</sup>

20. The Commission’s rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all entities that use the telephone or facsimile machine to advertise.<sup>863</sup> That is, our action affects the myriad of businesses throughout the nation that use telemarketing to advertise. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

21. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>864</sup> And, as of 1992, nationwide there were approximately 275,801 small organizations [not-

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<sup>857</sup> NYSCPB-Other Than National DNC List Comments at 9.

<sup>858</sup> NYSCPB-Other Than National DNC List Comments at 10.

<sup>859</sup> 5 U.S.C. § 604(a)(3).

<sup>860</sup> 5 U.S.C. § 601(6).

<sup>861</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comments, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>862</sup> 15 U.S.C. § 632.

<sup>863</sup> 47 C.F.R. § 64.1200.

<sup>864</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

for-profit]).<sup>865</sup>

22. Again, we note that our action affects an exhaustive list of business types and varieties. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that “telemarketing bureaus” with \$6 million or less in annual receipts qualify as small businesses.<sup>866</sup> For 1997, there were 1,727 firms in the “telemarketing bureau” category, total, which operated for the entire year.<sup>867</sup> Of this total, 1,536 reported annual receipts of less than \$5 million, and an additional 77 reported receipts of \$5 million to \$9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

23. The rules contained herein require significant recordkeeping requirements on the part of businesses, including small business entities. First, while the national do-not-call list will be developed and maintained by the FTC, all businesses that engage in telemarketing will be responsible for obtaining the list of telephone numbers on the national do-not-call list and scrubbing their calling lists to avoid calling those numbers.<sup>868</sup> They must also continue to be responsible for maintaining their own company-specific do-not-call lists; however, this is not a new requirement, but a continuation of the Commission’s existing rules. The Commission has reduced the period of time that businesses must retain company-specific do-not-call requests from 10 years to five years. In addition, for those businesses, including small businesses, that wish to call consumers under the “established business relationship” exemption, they must continue to maintain customer lists in the normal course of business. Because of the time limits associated with this rule, businesses will need to monitor and record consumer contacts to assure that they are complying with the 18-month and three-month provisions in the rule. Businesses that want to call consumers with whom they have no relationship, but who are listed on the national do-not-call list, must obtain a consumer’s express permission to call. This permission must be evidenced by a signed, written agreement.

24. Second, all businesses that use autodialers, including predictive dialers, to sell goods or services, will be required to maintain records documenting compliance with the call abandonment rules.<sup>869</sup> Such records should demonstrate the telemarketers’ compliance with a call abandonment rate of no less than three percent measured over a 30-day period, with the two-second-transfer rule, and with the ring duration requirement.

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<sup>865</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>866</sup> See 13 C.F.R. § 121.201, NAICS code 561422.

<sup>867</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Administrative and Support and Waste Management and Remediation Services, Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 561422 (issued Oct. 2000).

<sup>868</sup> Order, paras 16-85.

<sup>869</sup> Order, paras. 129-134, 146-159.

25. Third, with the exception of tax-exempt nonprofit organizations, all businesses that engage in telemarketing will be required to transmit caller ID information.<sup>870</sup>

26. Fourth, businesses that advertise by fax will be required to maintain records demonstrating that recipients have provided express permission to send fax advertisements. Such permission must be given in writing, and businesses must document that they have obtained the required permission.<sup>871</sup>

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>872</sup>

28. There were five specific areas in which the Commission considered alternatives for small businesses. These areas were: (1) establishing a National Do-Not-Call List ((a) providing a portion of the national do-not-call list (five area codes) for free, (b) providing businesses with 30 days to process do-not-call requests, and (c) reducing the do-not-call record retention rate from 10 years to five years); (2) maintaining the current established business rule exemption and adopting the FTC’s time limits of 18 months and three months; (3) establishing a call abandonment rate of three percent, rather than zero percent, and measuring the rate over a 30-day period, rather than on a per day basis; (4) continuing to prohibit facsimile advertising to residential and business numbers; and (5) declining to require businesses to maintain a website or toll-free number for do-not-call requests or confirmation of such requests by consumers. As mentioned, *supra*, in Section B of the FRFA, small businesses presented arguments on both sides of each of these issues.

29. National Do-Not-Call List. This Order establishes a national do-not-call list for those residential telephone subscribers who wish to avoid most unwanted telephone solicitations.<sup>873</sup> Although many businesses, including small businesses, objected to a national do-not-call registry,<sup>874</sup> the Commission determined that a national do-not-call list was necessary to carry out the directives in the TCPA. We agreed with those commenters who maintained that the company-specific approach to concerns about unwanted telephone solicitations does not alone

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<sup>870</sup> Order, paras. 173-184.

<sup>871</sup> Order, paras. 185-203.

<sup>872</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>873</sup> Order, paras. 25-41.

<sup>874</sup> See e.g., MBNA Comments at 4.

adequately protect individuals' privacy interests.<sup>875</sup> We declined to exempt local solicitations and small businesses from the national do-not-call list.<sup>876</sup> Given the numerous entities that solicit by telephone, and the technological tools that allow even small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy. In addition, we declined to permit businesses to register their numbers on the national do-not-call registry, despite the requests of numerous small business owners to do so.<sup>877</sup> The TCPA expressly contemplates that a national do-not-call database includes residential telephone subscribers' numbers. Although business numbers will not be included in the national do-not-call database, a business could nevertheless *request* that its number be added to a company's do-not-call list.

30. The Commission considered the costs to small businesses of purchasing the national do-not-call list. In an attempt to minimize the cost for small businesses, we have considered an alternative and determined that businesses will be allowed to obtain up to five area codes free of charge.<sup>878</sup> Since many small businesses telemarket within a local area, providing five area codes at no cost should help to reduce or eliminate the costs of purchasing the national registry for small businesses.<sup>879</sup> Furthermore, as suggested by NCS, small businesses should be able to gain access to the national list in an efficient, cost-effective manner via the Internet.<sup>880</sup>

31. As discussed extensively in the Order, many businesses, including small business entities, requested specific exemptions from the requirements of a national do-not-call list.<sup>881</sup> In order to minimize potential confusion for both consumers and businesses alike, we declined to create specific exemptions for small businesses.<sup>882</sup> We believe the exemptions adopted for calls made to consumers with whom a seller has an established business relationship and those that have provided express agreement to be called provide businesses with a reasonable opportunity to conduct their business while protecting consumer privacy interests.

32. The Commission also considered modifying for small businesses the time frames for (1) processing consumers' do-not-call requests; (2) retaining consumer do-not-call records; and (3) scrubbing calling lists against the national do-not-call registry. In doing so, we recognized the limitations on small businesses of processing requests in a timely manner.<sup>883</sup>

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<sup>875</sup> See e.g., Privacy Rights Comments at 2.

<sup>876</sup> Order, paras. 46-49, 54.

<sup>877</sup> See e.g., Mathemaesthetics Comments at 6.

<sup>878</sup> Order, para. 54.

<sup>879</sup> See e.g., MBA Reply at 3; NAA Comments at 3; SBSC Comments at 2; PLP Comments at 5.

<sup>880</sup> NCS Comments at 4-5.

<sup>881</sup> See e.g., NAA Comments at 12-14 (exempt newspapers); NAIFA Comments at 3 (exempt referral calls); SBSC Comments at 2 (exempt local calls); MBA Comments at 5 (exempt calls to set up face-to-face meetings).

<sup>882</sup> Order, paras. 46-54.

<sup>883</sup> Order, para. 94.

Therefore, we determined to require that both large and small businesses must honor do-not-call requests within 30 days from the date such a request is made, instead of requiring that businesses honor requests in less time.<sup>884</sup> Although some commenters suggested periods of up to 60 to 90 days to process do-not-call requests, we determined that such an inconsistency in the rules would lead to confusion for consumers. Consumers might not easily recognize that the telemarketer calling represented a small business and that they must then allow a longer period of time for their do-not-call requests to be processed.

33. The Commission also determined to reduce the retention period of do-not-call records from 10 years to five years.<sup>885</sup> This modification should benefit businesses that are concerned about telephone numbers that change hands over time. They argue that a shorter retention requirement will result in do-not-call lists that more accurately reflect those consumers who have requested not to be called. Finally, we considered allowing small businesses additional time to scrub their customer call lists against the national do-not-call database. The FTC's rules require telemarketers to scrub their lists every 90 days. For the sake of consistency, and to avoid confusion on the part of consumers and businesses, the Commission determined to require all businesses to access the national registry and scrub their calling lists of numbers in the registry every 90 days.

34. Established Business Relationship. We have modified the current definition of "established business relationship"<sup>886</sup> so that it is limited in duration to 18 months from any purchase or transaction and three months from any inquiry or application. The revised definition is consistent with the definition adopted by the FTC.<sup>887</sup> We concluded that regulating the duration of an established business relationship is necessary to minimize confusion and frustration for consumers who receive calls from companies they have not contacted or patronized for many years. There was little consensus among industry members about how long an established business relationship should last following a transaction between the consumer and seller.<sup>888</sup> We believe the 18-month timeframe strikes an appropriate balance between industry practices and consumer privacy interests. Although businesses, including small businesses must monitor the length of relationships with their customers to determine whether they can lawfully call a customer, we believe that a rule consistent with the FTC's will benefit businesses by creating one uniform standard with which businesses must comply.

35. Call Abandonment. In the 2002 Notice, the Commission requested information on the use of predictive dialers and the harms that result when predictive dialers abandon calls.<sup>889</sup> In

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<sup>884</sup> Order, para. 94.

<sup>885</sup> Order, para. 92.

<sup>886</sup> Order, para. 113.

<sup>887</sup> See *FTC Order*, 68 Fed. Reg. 4580 at 4591-94.

<sup>888</sup> See, e.g., Bank of America Comments at 4 (36 months); MPA Comments at 12-13 (24 months); Sprint Comments at 18 (12 months).

<sup>889</sup> 2002 Notice, 17 FCC Rcd at 17475-76, para. 26.

response, some small businesses urged the Commission to adopt a maximum rate of zero on abandoned calls. They described their frustration over hang-up calls that interrupt their work and with answering the phone “only to find complete silence on the other end.”<sup>890</sup> Most industry members encouraged the Commission to adopt an abandonment rate of no less than five percent, claiming that this rate “minimizes abandoned calls, while still allowing for the substantial benefits achieved by predictive dialers.”<sup>891</sup> The Commission has determined that a three percent maximum rate on abandoned calls balances the interests of businesses that derive economic benefits from predictive dialers and consumers who find intrusive those calls delivered by predictive dialers.<sup>892</sup> We believe that this alternative, a rate of three percent, will also benefit small businesses that are affected by interruptions from hang-ups and “dead air” calls.

36. The three percent rate will be measured over a 30-day period, rather than on a per day basis. Industry members maintained that a per day measurement would not account for short-term fluctuations in marketing campaigns<sup>893</sup> and may be overly burdensome to smaller telemarketers. We believe that measuring the three percent rate over a longer period of time will still reduce the overall number of abandoned calls, yet permit telemarketers to manage individual calling campaigns effectively. It will also permit telemarketers to more easily comply with the recordkeeping requirements associated with the use of predictive dialers.

37. *Unsolicited Facsimile Advertising.* The record reveals that facsimile advertising can both benefit and harm small businesses with limited resources. The small businesses and organizations that rely upon faxing as a cost-effective way to advertise insist that the Commission allow facsimile advertising to continue.<sup>894</sup> Other small businesses contend that facsimile advertising interferes with their daily operations, increases labor costs, and wastes resources such as paper and toner.<sup>895</sup> The Commission has reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers.<sup>896</sup> Under the amended rules, a business may advertise by fax with the prior express permission of the fax recipient, which must be in writing.<sup>897</sup> Businesses may obtain such written permission through direct mail, websites, or during interaction with customers in their stores. This alternative will benefit those small businesses, which are inundated with unwanted fax advertisements.

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<sup>890</sup> Mathemaesthetics Comments at 6.

<sup>891</sup> WorldCom Reply at 18-19.

<sup>892</sup> Order, paras. 150-152.

<sup>893</sup> See, e.g., WorldCom Further Comments at 8; Teleperformance Further Comments at 4.

<sup>894</sup> NFIB Comments at 3-4.

<sup>895</sup> John Holcomb Comments at 1; Mathemaesthetics Comments at 2-3.

<sup>896</sup> Order, para. 189.

<sup>897</sup> Order, para. 191.

38. Website or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests. Lastly, the Commission has determined not to require businesses to provide a website or toll-free number for consumers to request placement on company-specific do-not-call lists or to respond affirmatively to do-not-call requests or otherwise provide some means of confirmation that consumers have been added to a company's do-not-call list.<sup>898</sup> Several commenters indicated that such requirements would be costly to small businesses.<sup>899</sup> Although we believe these measures would improve the ability of consumers to register do-not-call requests, we agree that such requirements would be potentially costly to businesses, particularly small businesses. Instead, we believe that the national do-not-call registry will provide consumers with a viable alternative if they are concerned that their company-specific do-not-call requests are not being honored. In addition, consumers may pursue a private right of action if there is a violation of the do-not-call rules. This alternative should reduce, for small businesses who engage in telemarketing, both the potential cost and resource burdens of maintaining company-specific lists.

39. REPORT TO CONGRESS: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>900</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>901</sup>

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<sup>898</sup> Order, para. 93.

<sup>899</sup> MBA Comments at 6-7.

<sup>900</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>901</sup> See 5 U.S.C. § 604(b).

## Appendix C

Comments Filed

*Due to the significant number of comments filed by individual consumers in this proceeding, we have listed below only those comments received from industry, consumer advocacy groups and governmental entities. All individual consumer comments, including those cited in the Report and Order, are available for inspection on the Commission's Electronic Comment Filing System (ECFS).*

ACI Telecentrics Incorporated (5-2-03)	ACI
Allstate Life Insurance Company (Lisa Behzad; 12-9-02)	Allstate
Americall Group, Inc. (11-26-02)	Americall
American Association of Blood Banks (Marlene H. Dortch; 12-6-02)	AABB
American Association of Retired Persons (AARP; 1-31-03)	AARP
American Bankers Association (12-9-02)	ABA
American Business Media (11-22-02)	ABM
American Express Company (12-5-02)	American Express
American General Finance, Inc. (12-10-02)	AGF
American Insurance Association (11-21-02)	AIA
American International Automobile Dealers Association (12-9-02)	AIADA
American Red Cross (12-9-02)	Red Cross
American Resort Development Association (11-15-02)	ARDA
American Teleservices Association (12-9-02) (12-23-02)	ATA
America's Blood Centers (Jeanne Dariotis; 12-5-02)	ABC
Ameriquest Mortgage Company (12-9-02)	Ameriquest
Association for Communications Technology Professionals in Higher Education (ACUTA, Inc.) and Association of College and University Housing Officers-International (ACUHO-I) (ACUTA and ACUHO-I; 12-9-02)	ACUTA
Association for Competitive Technology (12-9-02)	ACT
Association of Fundraising Professionals (11-27-02)	AFP
AT&T Wireless Services, Inc. (12-9-02)	AT&T Wireless
Autoflex Leasing (11-18-02)	Autoflex
Avinta Communications, Inc. (Abraham Y. Chen; 11-18-02)	Avinta
Bank of America (12-3-02)	Bank of America
BellSouth Corporation (12-9-02)	BellSouth
Blocklist.com (12-9-02)	Blocklist.com
BMO Financial Group (12-9-02)	BMO Financial
The Broadcast Team (12-6-02)	TBT
Brunswick Corporation (12-9-02)	Brunswick
Californians Against Telephone Solicitation (Robert Arkow; 12-9-02)	CATS
Call Compliance, Inc. (12-9-02)	Call Compliance
Castel, Inc. (2-28-03)	Castel
Cellular Telecommunications & Internet Association (12-9-02)	CTIA
Cendant Corporation (11-22-02)	Cendant

Center for Democracy & Technology (12-9-02)	CDT
Cherry Communications (11-21-02)	Cherry
Cingular Wireless LLC (12-9-02)	Cingular
Citigroup, Inc. (12-12-02)	Citigroup
City of Chicago (11-22-02)	City of Chicago
CMOR (12-9-02)	CMOR
CNN.com (4-22-03)	CNN
Colorado Public Utilities Commission (12-3-02)	CO PUC
Comcast Cable Communications, Inc. (12-9-02)	Comcast
Concerned Telephone Companies (12-9-02)	CTC
Consumer Bankers Association (12-9-02)	CBA
Consumer Choice Coalition (12-2-02)	Coalition
Consumer Disability Telecommunications Advisory Committee (12-24-02)	CDTAC
Consumer Mortgage Coalition (12-19-02)	CMC
Convergys Corporation (12-9-02)	Convergys
Copilevitz and Canter, LLC (William E. Raney; 12-9-02)	Copilevitz & Canter
Cox Enterprises, Inc. (12-9-02)	Cox
DialAmerica Marketing, Inc. (12-10-02)	DialAmerica
Direct Marketing Association (12-9-02)	DMA
Direct Selling Association (12-9-02)	DSA
DIRECTV, Inc. (12-9-02)	DIRECTV
Discover Bank (12-9-02)	Discover
Electronic Privacy Information Center; Consumer Task Force for Automotive Issues; Remar Sutton; Consumer Action; Privacy Rights Clearinghouse; Consumer Federation of America; International Union, UAW; Free Congress Foundation; Junkbusters Corp.; Consumer Project on Technology; Computer Professionals for Social Responsibility; and Private Citizens, Inc. (12-9-02)	EPIC
Electronic Retailing Association (12-9-02)	ERA
Emergency Communications Network, Inc. (12-6-02)	ECN
Farmers Insurance Group (11-22-02)	Farmers
Financial Services Roundtable (12-12-02)	FSR
Florida Department of Agriculture and Consumer Services (1-8-03)	FL DACS
Fund for Public Interest Research, Inc. (Jon Scarlett; 12-6-02)	Fund for Public Interest
Globecomm Systems, Inc. (12-9-02)	Globecomm
Hilton Head Hospitality Resort Services (1-31-03)	Hilton Head
Household Automotive Finance Corporation; OFL-A Receivables Corp.; and Household Automotive Credit Corporation (12-9-02)	Household Automotive
Household Bank (SB), N.A. (12-9-02)	Household Bank
Household Finance Corp. (House Hold Finance Corporation; 12-12-02)	Household Finance
Household Financial Services, Inc. (12-10-02)	HFS
Hunton & Williams (11-22-02)	Hunton & Williams
IBM Corporate Market Intelligence (2-4-03)	IBM
Intellidyn Corporation (Kathie Fleischer; 12-4-02)	Intellidyn
Interactive Teleservices Corporation (Barbara Bricker; 4-10-03) (Duane L. Billingslea; 4-11-03)	ITC

Intrado Inc. (11-22-02)	Intrado
Intuit, Inc. (12-9-02)	Intuit
Katz & Korin (Robert J. Schuckit; 10-5-02)	Katz & Korin
Kauffman Group Inc. (11-25-02)	Kauffman
Kondos & Kondos Law Offices (11-14-02)	Kondos & Kondos
LCC International, Inc. (12-9-02)	LCC
The Leukemia & Lymphoma Society (George Dahlman; 1-31-03 and 5-2-03)	L&LS
LSSi Corp. (12-9-02)	LSSi
Magazine Publishers of America (12-9-02)	MPA
March of Dimes (11-22-02)	March of Dimes
MasterCard International Incorporated (12-9-02)	Mastercard
Mathemaesthetics, Inc. (11-22-02) ( <i>see also</i> Douglas M. McKenna)	Mathemaesthetics
MBNA America Bank, N.A. (12-9-02) (Revised 12-10-02)	MBNA
Metris Companies, Inc. (12-6-02)	Metris
Meyer Associates, Inc. ([Thoams] Caprio; 4-24-03)	Meyer
MidFirst Bank (1-9-03)	MidFirst
Mortgage Bankers Association of America (12-9-02)	MBA
Mortgage Investors Corporation, Inc. (12-9-02)	Mortgage Investors
Mothers Against Drunk Driving (1-30-03) (Wendy J. Hamilton; 5-1-03)	MADD
Moultrie Independent Telephone Company (12-9-02)	Moultrie
National Association of Attorneys General (12-9-02)	NAAG
National Association of Broadcasters (12-9-02)	NAB
National Association of Consumer Agency Administrators (Kathleen Thuner, President; 11-22-02)	NACAA
National Association of Independent Insurers (12-10-02)	NAII
National Association of Insurance & Financial Advisors (11-22-02)	NAIFA
National Association of Mortgage Brokers (12-9-02) ( <i>see also</i> Armand Cosenza)	NAMB
National Association of Regulatory Utility Commissioners (11-22-02)	NARUC
National Association of State Utility Consumer Advocates (NASUCA; 12-9-02)	NASUCA
National Automobile Dealers Association (12-10-02)	NADA
National Cable & Telecommunications Association (12-9-02)	NCTA
National Consumers League (12-6-02)	NCL
National Energy Marketers Association (11-22-02)	NEM
National Federation of Independent Business (1-9-03)	NFIB
National Public Radio, Inc. (12-9-02)	NPR
National Retail Federation (12-9-02)	NRF
National Telecommunications Cooperative Association (11-22-02)	NTCA
NCS Pearson, Inc. (12-9-02)	NCS
NeuStar, Inc. (12-9-02)	NeuStar
New Orleans, Utility, Cable & Telecommunications Committee of the City Council (11-18-02)	City of New Orleans
Newsletter & Electronic Publishers Association (12-9-02)	NEPA
Newspaper Association of America (12-9-02)	NAA
New York State Consumer Protection Board (11-22-02) (3 comments)	NYSCPB

Nextel Communications, Inc. (12-9-02)	Nextel
Nielsen Media Research, Inc. (1-31-03)	Nielsen
North Dakota Public Service Commission (12-2-02)	ND PSC
Not-For-Profit and Charitable Coalition (11-22-02)	NPCC
Office of the People's Counsel for the District of Columbia (Elizabeth A. Noel; 12-9-02)	OPC-DC
Ohio, Public Utilities Commission (12-9-02)	PUC of Ohio
Oregon Telecommunications Association (12-3-02)	OTA
Pacesetter Corporation (11-20-02)	Pacesetter
Personal Legal Plans, Inc. (12-16-02)	PLP
Progressive Casualty Insurance Company (11-18-02)	Progressive Casualty
Privacilla.org (12-9-02)	Privacilla.org
Privacy Rights Clearinghouse (Beth Givens; 12-5-02)	PRC
Private Citizen, Inc. (12-9-02)	Private Citizen
Process Handler et al. For Hire, Inc. (5-14-03)	Process Handler
Progressive Business Publications (Edward M. Satell; 4-28-03)	Progressive Business
Qwest Services Corporation (12-9-02)	Qwest
R & D Lawn & Tree Services (11-18-02)	R & D
Reed Elsevier, Inc. (12-9-02)	Reed
Reese Brothers, Inc. (12-9-02)	Reese
Response Catalyst (Doug Hibbeler; 12-9-02)	Response Catalyst
Royal Sonesta Hotel (4-7-03)	Royal Sonesta
SBC Communications, Inc. (12-9-02)	SBC
Scholastic, Inc. (12-9-02)	Scholastic
The Seattle Times Company (12-9-02)	Seattle Times
SER Solutions, Inc. (11-19-02)	SER
Small Business Survival Committee (1-31-03)	SBSC
Special Olympics Florida (Laurie Moyson; 5-8-03)	Special Olympics FL
Special Olympics Hawaii (Nancy Bottelo; 1-30-03)	Special Olympics HI
Special Olympics Kansas (5-1-03)	Special Olympics KS
Special Olympics New Jersey (Suzanne Schwanda; 1-31-03)	Special Olympics NJ
Special Olympics New Mexico (Randy Mascarella; 4-30-03)	Special Olympics NM
Special Olympics New York (5-2-03)	Special Olympics NY
Special Olympics Ohio (Federal Communications Commission; 1-31-03)	Special Olympics OH
Special Olympics Virginia (5-2-03)	Special Olympics VA
Special Olympics Wisconsin (Dennis H. Alldridge; 1-30-03)	Special Olympics WI
Sprint (12-9-02)	Sprint
Student Parent Support Services Corp. (3-19-03)	Student Support
Suggs & Associates, P.C. (James [M.Suggs]; 12-4-02)	Suggs
Sytel Limited (12-9-02)	Sytel
Technion Communications Corp. (11-19-02)	Technion
Telatron Marketing Group, Inc. (12-9-02)	Telatron
Telecommunications for the Deaf (11-15-02)	TDI
Teleperformance USA (Julie Loppe-Peyrin; 12-6-02) (Timothy J. Casey; 12-6-02)	Teleperformance
Telestar Marketing, L.P. (11-19-02)	Telestar
Tennessee Regulatory Authority and the	

Tennessee Attorney General (12-9-02)	TN AG
Texas, Office of Public Utility Counsel (12-9-02)	TOPUC
Texas, Public Utility Commission (12-3-02)	Texas PUC
TSI Telecommunications Services, Inc. (11-7-02)	TSI
U. S. Chamber of Commerce (12-26-02)	Chamber of Commerce
Vector Marketing Corporation (12-9-02)	Vector
Ver-A-Fast (12-10-02) ( <i>see also</i> Bob Bensman; 11-19-02)	Ver-A-Fast
VeriSign, Inc. (f/n/a Illuminet, Inc.) (3-31-03)	VeriSign
Verizon (12-10-02)	Verizon
Verizon Wireless (12-9-02)	Verizon Wireless
Visa U.S.A. Inc. (12-9-02)	Visa
Wells Fargo & Company (11-5-02)	Wells Fargo
Winnebago Cooperative Telephone Association (1-30-03)	Winnebago
Worldcom, Inc. (12-9-02)	Worldcom
Xpedite Systems, Inc. (12-9-02)	Xpedite
Yellow Pages Integrated Media Association (12-9-02)	Yellow Pages

Reply Comments Filed

Adval Communications, Inc. (1-31-03)	ADVAL
American Teleservices Association (1-31-03) (3-5-03, correction)	ATA
Ameriquest Mortgage Company (1-31-03)	Ameriquest
AT&T Wireless Services, Inc. (1-31-03)	AT&T Wireless
BellSouth Corporation (1-31-03)	BellSouth
Cablevision Systems Corporation (1-31-03)	Cablevision
Cavalier Telephone, LLC (1-31-03)	Cavalier
CMOR (1-31-03)	CMOR
Coontz, J. Greg (1-8-03)	
DialAmerica Marketing, Inc. (1-31-03)	DialAmerica
Direct Marketing Association (1-31-03)	DMA
DIRECTV, Inc. (1-31-03)	DIRECTV
Hershovitz, Marc B., Michael Jablonski, Ned Blumenthal and C. Ronald Ellington (1-8-03) (3 comments)	Hershovitz
The International Softswitch Consortium (1-31-03)	ISC
Intuit, Inc. (1-31-03)	Intuit
LSSi Corp. (Lissi Corp; 1-31-03)	LSSi
Mathemaesthetics, Inc. (1-8-03) ( <i>see also</i> Douglas McKenna; 1-6-03)	Mathemaesthetics
MBNA America Bank, N.A. (1-31-03)	MBNA
Mortgage Bankers Association of America (Stephen A. O'Conner; 1-31-03)	MBA
National Association of Broadcasters (1-31-03)	NAB
National Association of State Utility Consumer Advocates (NASUCA; 1-31-03)	NASUCA
National Public Radio, Inc. (1-31-03)	NPR
NCS Pearson, Inc. (1-31-03)	NCS
The Newspaper Association of America (1-21-03)	NAA
Nextel Communications, Inc. (1-31-03)	Nextel
Office of the People's Counsel for the District of Columbia (Elizabeth A. Noël, People's Counsel; 1-31-03)	OPC-DC
Private Citizen, Inc. (1-9-03)	Private Citizen
RoperASW (1-30-03)	RoperASW
SBC Communications, Inc. (1-31-03)	SBC
Sytel Limited (2-3-03)	Sytel
Teleperformance USA (4-30-03)	Teleperformance
Vector Marketing Corporation (1-31-03)	Vector
Verizon (1-31-03)	Verizon
Verizon Wireless (1-31-03)	Verizon Wireless
Visa (1-31-03)	Visa
VoltDelta (Brad Schorer; 12-9-02)	VoltDelta
Worldcom, Inc. (1-31-03)	Worldcom
Xpedite Systems, Inc. (1-31-03)	Xpedite
Yellow Pages Integrated Media Association (1-31-03)	Yellow Pages

Further Comments Filed

Active Periodicals, Inc. (5-5-03)	Active Periodicals
Allstate Life Insurance Company (5-5-03)	Allstate
American Association of Retired Persons (AARP; 5-19-03)	AARP
American Council of Life Insurers (5-5-03)	ACLI
American Teleservices Association (5-5-03)	ATA
America's Community Bankers (5-8-03)	ACB
Ameriquest Mortgage Company (5-5-03)	Ameriquest
Bank of America Corporation (Kathryn D. Kohler; 5-2-03)	Bank of America
Bank One Corporation (5-5-03)	Bank One
Cendant Corporation (5-5-03)	Cendant
Citigroup Inc. (5-19-03)	Citigroup
City of Chicago (5-1-03)	City of Chicago
Chrusch, Michael J., Esq. (5-5-03)	
Consumer Council of America (5-5-03)	CCA
Direct Marketing Association (5-5-03)	DMA
DIRECTV, Inc. (5-5-03)	DIRECTV
Electronic Retailing Association (5-5-03)	ERA
Federal Trade Commission (5-12-03)	FTC
Household Bank (SB), N.A. (5-2-03)	Household
InfoCision Management Corporation (5-5-03)	InfoCision
Interactive Teleservices Corporation	ITC
Intuit Inc. (5-5-03)	Intuit
Lorman Education Services (5-5-03)	Lorman
MBNA America Bank, N.A. (5-5-03)	MBNA
Metris Companies Inc. (5-5-03)	Metris
Miller Isar, Inc. (5-2-03)	Miller Isar
Mortgage Bankers Association of America (Kurt Pfothenhauer; 5-5-03)	MBA
National Association of Independent Insurers (National Association of Independent Insures [sic]; 5-5-03)	NAII
National Association of Realtors (National Association of Realtor; 5-5-03)	NAR
National Association of State Utility Consumer Advocates (NASUCA; 5-5-03)	NASUCA
National Association of Insurance and Financial Advisors (5-2-03)	NAIFA
National Telecommunications Cooperative Association (NTCA; 5-5-03)	NTCA
Newspaper Association of America (5-5-03)	NAA
New Jersey State Division of the Ratepayer Advocate (5-5-03)	New Jersey Ratepayer
Nextel Communications, Inc. (5-5-03)	Nextel
Scholastic Inc. (5-5-03)	Scholastic
Securities Industry Association (James Y. Chin; 5-5-03)	SIA
Software & Information Industry Association (5-5-03)	SIIA
Sprint Corporation (5-5-03)	Sprint
Stonebridge Life Insurance Companies (5-5-03)	Stonebridge
Teleperformance USA (4-29-03)	Teleperformance
Tennessee Regulatory Authority (5-5-03)	TN RA

Vector Marketing Corporation

(Vector – Marketing Corporation; 4-29-03)

Verizon (5-5-03)

Winstar Communications, LLC (5-5-03)

Worldcom, Inc. (5-5-03)

Yellow Pages Integrated Media Association (5-5-03)

Vector

Verizon

Winstar

Worldcom

Yellow Pages

**Further Reply Comments Filed**

American Council of Life Insurers (5-19-03)	ACLI
American Teleservices Association (5-19-03)	ATA
America's Community Bankers (5-8-03)	ACB
Ameriquest Mortgage Company (5-5-03)	Ameriquest
Competitive Telecommunications Association (5-19-03)	Competitive Telecom
DialAmerica Marketing, Inc. (5-19-03)	DMA
Indiana Attorney General Steve Carter (5-19-03)	Indiana AG
National Association of State Utility Consumer Advocates (NASUCA; 5-19-03)	NASUCA
New Jersey State Division of the Ratepayer Advocate (5-19-03)	New Jersey Ratepayer
Primerica Financial Services, Inc. (5-19-03)	Primerica
SBC Communications, Inc. (SBC Communications Inc.; 5-19-03)	SBC
Verizon (5-5-03)	Verizon

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; CG Docket No. 02-278*

Our decision today is the most sweeping consumer protection measure ever adopted by the FCC. No longer will consumers be forced to endure unwanted telephone calls and faxes. Under the Telephone Consumer Protection Act (TCPA) and our revised rules, consumers are empowered to choose.

The TCPA is about tools. It gives consumers the tools they need to build a high and strong fence around their homes to protect them from unsolicited telephone calls and faxes. It also allows other consumers to have a lower fence or no fence at all, if they wish to take advantage of these commercial messages. Our decision makes the American consumer's toolbox more complete by creating a national do not call list and strengthening and modifying our other longstanding protections under the TCPA. Our goal: to maximize consumers' ability to control the messages they receive on their personal phones and faxes.

Since the enactment of the TCPA a decade ago, the rapid growth of technology has led to a five-fold increase in marketing contacts via telephone. An increased number of telemarketing calls, the proliferation of predictive dialers, and the incomplete protections of less-comprehensive do not call lists have combined to necessitate the Commission's new approach. Consumers want more control over their telephones – today we give it to them.

In addition to the national do not call list, our decision contains a number of other important provisions. First, although telemarketing calls made pursuant to an existing business relationship are exempt under the TCPA, the Commission today significantly narrows the scope of that exemption to better protect consumers. Consumers may eliminate even these commercial calls upon request. Second, we tighten the limitations on our existing do not call rules and impose additional requirements on predictive dialers, pre-recorded messages, and calls to wireless phones. We also require telephone solicitations to provide caller identification. Finally we adopt stricter rules to control unsolicited fax advertising. Taken together and combined with vigilant enforcement, our rules provide consumers with the tools they need to craft the commercial relationships they want.

Consistent with the instructions in the recently enacted Do Not Call Implementation Act, our order maximizes consistency and complements the FTC's recently amended rules. I look forward to working with the FTC, under the fine leadership of Chairman Muris, to harmonize our rules and move forward with nation-wide implementation of the federal Do-Not-Call Registry.

**SEPARATE STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order*

Today's decision to establish a national do-not-call list is directly responsive to consumer frustration with telemarketing overload. Consumers are fed up with the barrage of telemarketing calls that intrude on their privacy, and they crave the ability to just say no. Congress also has made clear the importance of giving consumers a more effective means of blocking unwanted calls. Congress authorized establishment of a national do-not-call registry in the Telephone Consumer Protection Act of 1991, and earlier this year, it enacted the Do-Not-Call Implementation Act. This legislation authorizes funding for the Federal Trade Commission's national registry and directs this Commission to "maximize consistency" with the FTC's Telemarketing Sales Rule. Today's action responds to this congressional direction by providing a convenient, one-stop solution that will enable consumers to place their phone numbers on a unified national do-not-call list at no charge.

At the same time, I remain mindful that telemarketing can serve a valuable function by providing information to consumers about goods and services. Many consumers appreciate learning about ways to save money, obtain better service, or otherwise take advantage of commercial opportunities. Moreover, telemarketers enjoy protection under the First Amendment, which requires that any restrictions on commercial speech advance a substantial governmental interest and be no more extensive than necessary. Accordingly, I am pleased that we have crafted rules that balance the competing interests at stake.

In particular, we have preserved and in some cases modified the exemptions for calls to consumers with whom the marketer has an established business relationship, calls to consumers who have expressly consented to being called, and calls by tax-exempt nonprofit organizations (or by independent telemarketers calling on their behalf). Consumers should understand that, as a result of these statutory exemptions, placing a phone number on the national do-not-call list will not necessarily mean that you will receive *no* telemarketing calls. But the small number of calls received should be more consistent with consumers' expectations of privacy, and consumers can prohibit any further contact through company-specific do-not-call lists.

I am also pleased that the Commission has established a narrow exemption from the national do-not-call list to permit marketers to contact people with whom they have a personal relationship. I believe the record shows that Congress was concerned about anonymous calls using autodialers; it did not intend to put the Avon Lady out of business. Consumers generally expect and welcome calls from family, friends, and acquaintances who want to promote products and services. Restricting such calls therefore would impose a more extensive burden on speech than is necessary to achieve Congress's goals.

In addition, the Order appropriately clarifies the interplay between federal and state telemarketing restrictions. While I support empowering consumers to block unwanted calls, telemarketers should not have to comply with multiple, inconsistent rules. Indeed, Congress clearly called on this Commission and the FTC to establish a uniform federal regime. Thus, the Order appropriately clarifies that, while states may enforce the federal rules and may adopt more restrictive rules for intrastate calls, states generally may not regulate interstate calls.

In sum, I am pleased to support this Order, because it provides effective mechanisms for consumers to restrict unwanted telemarketing calls, while balancing the legitimate interests that companies and individuals have in communicating with customers and potential customers. I expect companies to comply with our new rules, and I look forward to working together with the FTC and state attorneys general to ensure that consumers receive the privacy protection they want and deserve.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278), Report and Order*

Few rights are so fundamental as the right to privacy in our daily lives, yet few are under such frontal assault. Our dinners are disrupted by unwanted phone calls. Our computer accounts are besieged with bothersome spam. Our mailboxes are swollen with advertisements for products, goods and services. We conduct our whole lives against the white noise of commercial solicitation. These intrusions exhaust us, irritate us and threaten our cherished right to be left alone.

Today we have an opportunity to do something about it. We have an opportunity to reinforce our homes against the constant invasion of commercialism and the endless nuisance of unwanted telemarketing calls. At the direction of Congress and through coordinated action with the Federal Trade Commission, we now return a measure of privacy control to citizens. We establish a national Do-Not-Call registry that permits each of us to choose limits on the telemarketing calls we receive. We do this in a way that balances the First Amendment rights of marketers with the right of each individual and every household to determine the scope of permissible intrusion. This decision represents a positive step for all of us, not only as consumers, but as citizens. I am pleased to support it.

I am especially pleased that the rules we adopt are in harmony with those put in place by our allies in this exercise at the Federal Trade Commission. This is consistent with Congress' direction that we "maximize consistency" with the rules adopted by our fellow agency. This makes for a user-friendly registry.

To ensure that the Do-Not-Call list achieves the protective power and prominence that Congress intended, both agencies must now work together—and with our partners in the states—to enforce the national program we establish here today. When the Do-Not-Call list is open for business, we will share the duty of vigilant enforcement. We worked hard here to balance the rights and privileges of personal contacts and relationships with the right to be left alone. I think we achieve good balance, but I never underestimate the inventiveness of some in skirting or abusing rules, and these individuals and enterprises should understand that such actions will not go unnoticed or unpunished.

We all owe a debt of gratitude to the many people at our Consumer and Governmental Affairs Bureau who worked hard to draft and coordinate and bring this item before the Commission and who will continue to labor on behalf of the American people to implement the rules and make the national registry a success. I also want to commend my colleagues for the productive discussions we have had on this item in recent days. The result is a little more privacy in our not-so-private society.

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket 02-278).*

I am pleased to support this item. By adopting a National Do-Not-Call List, we arm American consumers with a powerful tool to protect their privacy. This is one of the most significant things that the FCC has ever done for American families. It will benefit consumers on a daily basis and in a very personal way. It's certainly the thing that people will notice as much as anything else we have done. We're restoring peace and quiet around the dinner table for everyone who asks for it, and plenty will ask, myself included. The public has sent a resounding directive telling us that uninvited telephone solicitations are not merely a distraction but are driving customers away from their phones. Consumers have also made clear that our prior rules – without a national Do-Not-Call List – do not work to their satisfaction. And Congress has made its wishes clear by adopting the Do-Not-Call Act which authorized the establishment of the national list. My hope is that our actions here will allow the American public to once again view their phones as a useful connection to the world rather than a source of nightly harassment.

At the same time, we balance the interests of consumer privacy alongside the commercial speech interests of those businesses who use the telephone to offer goods and services and the interests of those consumers willing to receive such offers. The record bears out that many consumers find telephone solicitations valuable. According to industry estimates, outbound telemarketing generates between 300 and 600 billion dollars in annual revenues. So, I am sensitive to the potential impact of these rules on the businesses that rely on telephones to reach their customers. I have particular concern about the local telephone industry, where the practical effect of our established business relationship exemption may have an uneven impact on competitors. Nonetheless, Congress has captured the will of the people – certainly, as reflected in our record – when it directed us to “maximize the consistency” of our rules with the newly-adopted FTC national list. Congress did not explicitly provide for particular treatment of the local telephone industry in the Do-Not-Call Act, but I believe that this area warrants our special attention and monitoring.

So that our rules are no more extensive than necessary and because American consumers each hold different views about the value of telephone solicitations, we adopt a suite of options from which customers can choose the approach that best serves their needs. Under our rules, customers may sign up for the new national Do-Not-Call List or, alternatively, may continue to receive telemarketing calls and sign up for the company-specific lists when they no longer wish to hear from a particular company. When customers sign up for the national list, they still have the ability to grant express permission to receive calls from particular companies. So our rules are flexible enough to allow consumers to choose the best option for them.

We have a special obligation to remain vigilant in our implementation of these rules. Congress has asked us to report to it annually. I look forward to those reports with the optimism that we have adopted measures that will put American consumers back in control of their phones.