

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of)
1991)
)

**REPLY TO OPPOSITIONS TO THE
PETITION FOR RECONSIDERATION
SUBMITTED BY
TRADER PUBLISHING COMPANY**

Trader Publishing Company (“Trader”) hereby replies to parties opposing Trader’s petition¹ to the Federal Communications Commission (“FCC” or “Commission”) to reconsider certain rules the agency adopted in the above-captioned proceeding.² Trader, a privately-held media partnership of Cox Enterprises, Inc. and Landmark Communications, Inc., publishes classified advertising magazines, such as *Boat Trader*, *Auto Trader*, *Apartment for Rent* and *Employment Guide*. Trader classified magazines telemarket *only* to consumers who placed an ad in a newspaper or other medium recently beforehand, thereby helping consumers with an item to sell in 173 U.S. cities target their advertisements to high-probability buyers, sellers, renters and potential job recruits.

In its *Petition*, Trader asked the Commission to reconsider the scope of an exception to the agency’s rules, which allows telemarketers to call consumers registered on the national Do-Not-Call (“DNC”) list if the call is made with the consumer’s prior express invitation or

¹ *Petition for Reconsideration Submitted by Trader Publishing Company* (filed August 25, 2003) (“*Petition*”).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, 68 Fed. Reg. 44144 (July 25, 2003) (Final Rule).

permission.³ Specifically, Trader requested the FCC to clarify that this exception applies when: (a) a consumer publicly advertises his or her desire to engage in a transaction (e.g., to sell a car), providing a contact telephone number; and (b) a telemarketer calls the consumer at the advertised phone number no later than 30 days after publication of the advertisement *for the sole purpose of offering services reasonably calculated to help the consumer achieve the desired transaction*. Consumers could stop such telemarketing calls by requesting placement on company-specific DNC lists.

Two parties opposed Trader's *Petition* ("Opposition Parties"). The National Association of State Utility Consumer Advocates ("NASUCA") argued that residential telephone customers do not lose their protected status under the Commission's rules when they engage in a business transaction.⁴ Further, according to NASUCA, when consumers place classified ads, they expect to receive calls from prospective buyers, not "annoying and intrusive telemarketing calls" from service providers like classified magazines.⁵ Mr. Dennis C. Brown added that the clarification sought by Trader "would expand without limit to swallow a consumer's do-not-call rights if he once gave his phone number to anyone."⁶

In making these arguments, the Opposition Parties have construed Trader's telemarketing calls as "annoying and intrusive" without justification. In Trader's experience, most consumers who are running an ad do not object to receiving Trader's telemarketing calls. On average, 0.3 percent of consumers contacted by Trader request to be placed on the company's internal DNC list. Additionally, Trader's 8-12 percent "take rate" is tens of times more successful than most

³ *Id.*, 68 Fed. Reg. at 44177 (amending 47 C.F.R. § 64.1200(c)(2)(ii)).

⁴ *Opposition of the National Association of State Utility Consumer Advocates to Petitions for Reconsideration* at 9 (October 14, 2003) ("*NASUCA Opposition*").

⁵ *Id.*; see also, Dennis C. Brown, *Opposition to Petitions for Reconsideration* at 6-7 (October 13, 2003) ("*Brown Opposition*").

⁶ *Brown Opposition* at 6.

telemarketing. The Opposition Parties both confuse one-time telemarketing calls by classified magazines designed to further a consumer’s specific objective with the repeated, random offers made by telemarketers in general. In its *Petition*, Trader noted that in adopting the *Telephone Consumer Protection Act* (“TCPA”),⁷ Congress directed the FCC to “protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations *to which they object.*”⁸ It is reasonable to conclude that most consumers who express a general desire not to receive telemarketing calls by registering on the national DNC list nonetheless would not object to hearing from a classified magazine during the narrow period of time in which a consumer wants to sell the specific good that the magazine advertises to a targeted, high-probability group of buyers. If consumers do object upon receiving such a call, they may request placement on the classified magazine’s internal DNC list.

Further, although the Opposing Parties contend that residential subscribers should not “lose [their] status” as protected parties under the TCPA when they engage in a business transaction,⁹ Congress directed the FCC to balance “[i]ndividuals’ privacy rights” with “legitimate telemarketing practices.”¹⁰ When consumers advertise their telephone numbers in classified ads, they choose to limit their privacy out of a desire to sell a specific item. In this case, Trader believes that the balance should be set to allow for legitimate telemarketing practices that further the consumer’s objective in placing the ad.

Moreover, should the Commission grant Trader’s petition, individuals would nonetheless receive substantial privacy protection. Contrary to Mr. Brown’s assertion that granting the

⁷ 47 U.S.C. § 227.

⁸ 47 U.S.C. § 227(c)(1) (emphasis added).

⁹ See *NASUCA Opposition* at 9.

¹⁰ 47 U.S.C. §227, at Congressional Statement of Findings (9).

Petition would “swallow a consumer’s do-not-call rights,”¹¹ calls falling under the exception would be limited to a narrow window of time and to the sole purpose of offering services reasonably calculated to help the consumer achieve the specific transaction sought in his or her advertisement. Further, consumers could protect their privacy by making company-specific DNC requests.

Trader respectfully reiterates its request that the FCC clarify that telephone solicitations made to consumers on the national DNC list are pursuant to the consumer’s prior express invitation and not subject to the national DNC regulations if: (a) a consumer publicly advertises his or her desire to engage in a transaction, providing a contact telephone number; and (b) a telemarketer calls the consumer at the advertised phone number no later than 30 days after publication of the advertisement for the sole purpose of offering services reasonably calculated to help the consumer achieve the desired transaction. Consumers wishing not to be called further could request placement on company-specific DNC lists, voiding the express invitation exception with respect to all advertisements they place in the succeeding five years.

Respectfully submitted,

/s/_____

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¹¹ *Brown Opposition* at 6.

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.429(g), I hereby certify that a copy of the foregoing *Reply to Oppositions to the Petition for Reconsideration of Trader Publishing Company* was served by first-class mail, postage prepaid, to the parties identified below on this 3rd day of November 2003.

/s/ Amy E. Worlton

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