

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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

**SUPPLEMENTAL COMMENTS OF THE AMERICAN COUNCIL OF LIFE INSURERS
AND THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS**

The American Council of Life Insurers (“ACLI”)¹ and the National Association of Insurance and Financial Advisors (“NAIFA”)² hereby submit the following supplemental comments to their Reply Comments³ submitted pursuant to section 1.429 of the Commission’s rules in support of the Financial Services Coalition’s Petition for Reconsideration and Clarification⁴ of the Final Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (the “Rule”). The purpose of these supplemental comments is to advise the Commission of an important legislative development that ACLI and NAIFA believe adds additional support to the position we expressed in our Reply Comments.

BACKGROUND

The Rule prohibits a person from initiating a telephone solicitation under various circumstances, 47 C.F.R. § 64.1200(c), but provides that the term “telephone solicitation” does

¹ ACLI is the principal trade association of life insurance companies whose 383 member companies account for 73 percent of the assets of legal reserve life insurance companies in the United States, 70 percent of life insurance premiums and 77 percent of annuity considerations. ACLI members are also major participants in the pension, long-term care insurance, disability income insurance and reinsurance markets.

² NAIFA is a national nonprofit organization representing the interests of more than 70,000 insurance and financial advisors nationwide, through its federation of over 900 state and local associations. Founded in 1890, NAIFA is the nation's oldest and largest financial services membership association. NAIFA’s mission is to improve the business environment, enhance the professional skills and promote the ethical conduct of agents and others engaged in insurance and related financial services who assist the public in achieving financial security and independence.

³ Reply Comments of the American Council of Life Insurers and the National Association of Insurance and Financial Advisors, CG Docket No. 02-278 (filed November 21, 2003) (“Reply Comments”).

⁴ Financial Services Coalition Petition for Reconsideration and Clarification, CG Docket No. 02-278, (filed August 25, 2003).

not include a call or message to any person with whom the caller has an “established business relationship.” 47 C.F.R. § 64.1200(f)(9)(ii). The term “established business relationship” is defined in the Rule as:

[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.

47 C.F.R. § 64.1200(f)(3).

In our Reply Comments, ACLI and NAIFA expressed concern that the definition of “established business relationship” in the Rule may not take into account the unique nature of the business of insurance.⁵ We indicated that the definition in the Rule does not address the fact that after a consumer purchases an insurance policy or annuity, the policy or annuity remains in force until such time as the contractual obligation of the insurer under the contract is fulfilled. There may or may not be further purchases, transactions, or inquiries between the consumer and the insurance company or its representatives, but in either case, the business relationship remains ongoing. Accordingly, we urged the Commission to clarify and confirm that an established business relationship exists (1) between a person and his or her insurer as long as there is an insurance policy or annuity in force between the company and the person, and (2) between the person and his or her insurance agent, as long as there is an insurance policy or annuity in force that was placed by that insurance agent. ACLI and NAIFA now wish to call the Commission’s

⁵ See Reply Comments at 3-4.

attention to recent legislation in a related area that we believe provides strong additional support for our position that the Rule should be clarified in the manner requested.

THE FACT ACT

On December 4, 2003, the President signed into law the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”), Pub. L. No. 108-159, 117 Stat. 1952, which permanently extends certain provisions of the Fair Credit Reporting Act (“FCRA”) that were due to expire at the end of 2003, and which provides additional consumer protections relating to the disclosure and use of certain types of consumer information. Section 214 of the FACT Act amends the FCRA to provide that any person who receives information about a consumer from an affiliate may not use the information to make a marketing solicitation to the consumer about the person’s products and services unless the consumer is clearly and conspicuously informed about the disclosure and is provided an opportunity to prohibit the person from soliciting the consumer.⁶

In recognition of the special relationship companies have with their customers, Congress provided an exception from the general rule for persons using information to make a solicitation to a consumer with whom they have a “pre-existing business relationship.” The FACT Act defines “pre-existing business relationship” as

a relationship between a person, or a person’s licensed agent, and a consumer, based on—

- (A) a financial contract between a person and a consumer which is in force;
- (B) the purchase, rental, or lease by the consumer of that person’s goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately

⁶ Fair and Accurate Credit Transactions Act of 2003, sec. 214, § 624(a)(1), 117 Stat. 1952 (2003).

preceding the date on which the consumer is sent a solicitation covered by this section;

- (C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or
- (D) any other pre-existing customer relationship defined in the regulations implementing this section.

FACT Act, sec. 214, § 624(d)(1).

In fashioning the exemption for pre-existing business relationships, Congress recognized the uniqueness of the relationship between insurers, licensed agents and consumers. In defining the term “pre-existing business relationship” in section 214 of the FACT Act as including “a policy in force or [] another continuing relationship,” Congress specifically acknowledged that the relationships between insurers, their representatives, licensed insurance professionals and their customers are continuous and ongoing. The FACT Act reflects Congressional policy that insurers, their agents or licensed insurance professionals should be permitted to market to clients with whom they have an established relationship in the form of a policy or annuity in force or other continuing relationship. ACLI and NAIFA believe that it is appropriate for the Commission to take notice of recent Congressional legislation defining “pre-existing business relationship,” a term that is virtually identical in form, purpose and scope to the Commission’s term “established business relationship,” when it considers our Reply Comments.

CONCLUSION

Accordingly, ACLI and NAIFA urge the Commission to clarify the Rule’s definition of established business relationship as it pertains to life insurers and their representatives as indicated above in view of the recent enactment of the FACT Act.

Respectfully Submitted,

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