

INTRODUCTION

I would like to thank the Commission for giving me the opportunity to comment on the proposed regulations establishing a “safe harbor” provision for telemarketers calling cellular telephones, and on the 30-day update requirement for downloading the National DNC Database. I am a resident of the State of California and have long been active in attempting to enforce the Telephone Consumer Protection Act and the Commission’s rule prescribed thereunder.

SAFE HARBOR FOR CALLS TO CELLULAR TELEPHONE NUMBERS

1. The Commission should determine whether or not the industry’s complaint, that they cannot ascertain whether or not a cellular number has been “ported” to a residential telephone line, is accurate. The industry is known for jumping through loopholes and there is no doubt in my mind that they will continue to call a ported number for 30-days, even if they ascertain it has been ported. The DMA’s contention that violative calls are “inadvertent” and “...are as inevitable as erroneous calls to numbers on the national DNC list.” merely demonstrates their apologist stance. As the Circuit Court for the District of Columbia once said, “Nothing in Sec. 205(e) or in the Act suggests that the right of an overcharged consumer to recover \$50 is limited to cases in which the seller’s violation of the Act is willful. **‘Innocent non-conformity with the Price Control Act is as inflationary and as damaging to competitors and the public as guilty non-conformity.’**” Bowles v. American Stores, 139 F. 2d 377, 379 (D.C. Cir, 1943) [Emphasis added] The court went on to say, “Section 205(e) reflects the view that occasional hardship to one who honestly and intelligently endeavors to comply with the law is not too high a price to pay for the protection of the whole community against inflation.” Bowles at 379 The DMA and its ilk are quick to excuse actions for which there is no excuse. If the industry is capable of obtaining the necessary information within 24-hours, the “safe harbor” should be limited to 24-hours.

2. No matter what the Commission decides, it **must** emphasize to the industry and to the community at large, that the use of prerecorded messages to **any** line whether residential or cellular, is banned at all times except for the limited exemptions created by the Commission¹. The Commission should also note that this type of call, when placed to a residential telephone line, is banned no matter what method is used to dial the telephone. Congress was very clear in its prohibitions and the Commission should take care not to water them down.

REQUIREMENT TO OBTAIN THE NATIONAL DO-NOT-CALL (DNC) DATABASE EVERY 30-DAYS

3. This requirement should be a “no brainer”. Establishing a maximum time of 30-days between downloads of the national DNC database would not only bring the Commission’s rules in line with the FTC’s proposed rule, it would also make the requirement consistent with the Commission’s own rule as applied to company-specific lists. That rule requires that an objecting consumer’s number be entered into the company-specific list and honored, “...within a reasonable time from the date such request is made.” but in no case may that period exceed 30-days².

¹ In ignoring §227(c)(6) of the statute, the Commission erroneously created an “established business relationship” exemption for prerecorded messages. The Commission should correct this error at its earliest opportunity.

² 47 USC 64.1200(d)(3)

4. The 30-day requirement should not impose undue burdens upon the industry. Because there is an annual fee, the extra downloads will not result in increased charges³. There will be additional time for processing these additional downloads, but those costs should be negligible. The Commission should adopt the 30-day requirement for downloading the national DNC database.

SUNMMARY

Consumers will be well-served only if the Commission properly evaluates the industry request for a “safe harbor” for calls to ported telephone numbers and acts accordingly. Further, the Commission **must** reemphasize the prohibition against the use of prerecorded advertisements to any number at any time. The requirement to obtain the national DNC database every 30-days is reasonable and should be adopted.

I again thank the Commission for allowing me to comment on this issues, and for taking the time to review these comments.

Wayne G. Strang

³ No increased charges will result provided additional area codes are not added. That, of course, would be at the choice of the telemarketer.