

April 22, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation: CG Docket No. 02-278

Dear Ms. Dortch:

On April 21, Jerry Cerasale and Jim Conway of the Direct Marketing Association and a delegation of DMA members met with representatives of the Commission's staff to discuss certain issues relating to implementation of the Commission's amendments to the regulations promulgated pursuant to the Telephone Consumer Protection Act of 1991 ("TCPA"). In addition to Mr. Cerasale, the DMA was represented by: Margaret Kuman, Noreen Kaminski, Annette Cleckner, Karen Reidy, and Joan Mullin, and the undersigned. FCC staff representatives at the meeting included Genaro Fullano, Erica McMahan, and Richard Smith of the Consumer and Governmental Affairs Bureau and representatives of the Commission's Enforcement Bureau.

During the meeting, the DMA representatives identified and discussed problems that have arisen in connection with implementation of the Caller-ID requirements of the TCPA, which took effect in January of this year. The problems include: situations in which the name and/or number is transmitted by the telemarketer, but has been removed in the transmission process; situations in which the number has been converted in some fashion by the local exchange carrier and is therefore not useable by the consumer; and situations in which the end office does not provide ambiguous or conflict translation intercepts, which results in either misrouting of the number when the consumer attempts to use the callback feature of the Caller-ID service or otherwise fails to correctly translate the number received.

At the conclusion of the meeting, Mr. Fullano requested that the DMA representatives provide the Commission with further details with respect to these Caller ID issues. DMA is in the process of collecting such information and will do so in the near future.

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During the meeting, there was also discussion of issues relating to implementation and operation of the National Do Not Call registry. The DMA representatives noted that the primary responsibility for these issues rests with the Federal Trade Commission and the vendor it has selected for management of the registry; The DMA has met with FTC staff to address these issues. However, the DMA pointed out that, given the dual enforcement of the Do Not Call registry requirements, these are matters of which the FCC should be aware. Specifically, the DMA representatives suggested that it would be highly desirable for companies to have an opportunity to investigate complaints before one of the (or in some cases, both) agencies initiates formal proceedings. The experience of DMA members is that often the failure to block calls of numbers on the National DNC registry is the result of a timing phenomenon that cannot be resolved simply by shortening the time between mandatory downloads of the system.

The DMA representatives also brought to the Commission's attention certain proposed changes it has made to the FTC concerning the operation of the Do Not Call registry. These proposals are designed to make downloading of information more efficient and less costly for marketers. The DMA representatives also pointed out certain problems with respect to list hygiene that have been discussed with the FTC. These include problems associated with the inclusion of business numbers, toll-free numbers, facsimile numbers that are on the registry, and the length of time – under procedures established by the FTC and its vendor – that numbers taken out of service nonetheless remain on the DNC registry.

The DMA representatives expressed the desire that the FCC staff work closely with their counterparts at the Federal Trade Commission to address these registry issues. The problems cause annoyance to consumers and expose marketers to lost marketing opportunities, as well as a risk of sanctions with respect to matters that are not within their control.

Finally, the DMA representatives discussed DMA's position with respect to the matter of wireless number portability as described in the petition and subsequent comments filed by the Direct Marketing Association and the Newspaper Association of America. DMA requested that the Commission staff continue to work with DMA and Neustar in order to address the data aspect of this issue and urged the Commission to adopt the safe harbor approach for the reasons detailed in its submissions to the Commission.

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In accordance with the Commission's rules, a copy of this letter is being filed electronically for inclusion in the public record of this proceeding.

Respectfully submitted,

/s/

Ian D. Volner

cc: Genaro Fullano (*via email*)
Jerry Cerasale (*via email*)