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November 19, 2002

Secretary Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW Room TW-A325
Washington, DC 20554

Via Certified Mail

02-278
04-208
98-170

Re: Comments on the Federal Communications Commission's
Notice of Proposed Rulemaking and Memorandum Opinion and Order
(Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991)
CG Docket No. 02-278; CC Docket No. 92-90

Dear Secretary Dortch:

I am writing on behalf of Farmers Insurance Group and our more than 17,000 agents who serve the companies' more than 15 million customers. The Farmers Insurance Group is the third largest writer of personal lines property and casualty insurance in the United States.

After reviewing the October 8, 2002 notice of proposed rulemaking, we have a number of concerns with the Federal Communications Commission's (FCC) proposed rules and regulations implementing the Telephone Consumer Protection Act (TCPA) of 1991. Following are comments addressing those concerns with the current and proposed rules and a national do-not-call-list.

PRESENTATION OF ISSUES

As indicated in paragraph 11 (page 10), the following comments/issues are broken into the two major sections listed below. Where applicable, the paragraph number of the FCC document – for which the Commission is seeking comment – is specified first.

1. Issues relating to current TCPA rules.
2. Issues relating to a national do-not-call list.

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List A B C D E

1. Issues Relating to TCPA Current Rules

- **General comment/opinion:** In many states, legislation exempts insurance agents for calls that are intended to arrange a subsequent meeting between a salesperson and the consumer (face-to-face meeting) or because they have a current license as an insurance agent with the state. If possible, these regulations should be amended to exempt insurance agents. Such an exemption recognizes the legitimacy of agents' (small business owners) telemarketing practices. As

President Bush has ordered all federal agencies to implement policies to protect small businesses when writing new regulations, this deserves consideration. There is a fine balance between ensuring consumer privacy protection and consumer choice and avoiding unnecessary burdens on the telemarketing industry.

- **Paragraph 16 (page 12):** If the FTC and/or FCC adopt a national do-not-call list, it would seem burdensome and unnecessary for companies to maintain their own company-specific lists. As is done today, consumers can be advised how to reduce/eliminate unwanted telephone marketing calls. For example, information can be disseminated to consumers through their phone bill and the FCC and FTC websites.
- **Paragraph 17 (pages 12 & 13):** It would be a burden to require companies to provide a toll-free number and/or website that consumers can access to register their name on the list. Furthermore, this would also hold true for requiring companies to respond affirmatively to such requests or provide confirmation so that consumers can verify their requests have been processed. Companies that have exercised due diligence in maintaining the company-specific list should not be penalized with further burdensome requirements.

With respect to the requirement to honor requests for ten years, this appears significantly longer than the time requirement in legislation/regulations enacted by many states. (The time requirement also varies by state.) It would seem there should be more consistency.

In regards to “best practices” that provide telemarketers with possible safe harbors, rules should minimize unnecessary burdens on telemarketers. Inadvertent mistakes/errors do happen. Unless there is a blatant disregard for the regulations (i.e., willful and wanton act – fraudulent/abusive), telemarketers should be provided the benefit of the doubt. A review of the do-not-call legislation in California and Colorado may be of value. Protecting small businesses, especially those who employ legitimate telemarketing practices, from unnecessary burdens is imperative.

- **Paragraph 34 (pages 21 & 22):** The current “established business relationship” exemption should not be revisited. If it is, great care must be taken to ensure a revision does not interfere or impede communications between small businesses and their customers. The current exemption appears to be more business-friendly than such exemptions in some state-enacted legislation, which specify time limitations (varying by state).

The example in paragraph 34 (an inquiry regarding business location or hours) appears to assume that the called business can identify the caller’s phone number. Such calls don’t typically involve the exchange of personal information (name, phone number, etc.).

- **Paragraph 35 (pages 22 & 23):** Regarding whether a company should be obligated to honor a do-not-call request from a customer with whom he/she continues to do business, the potential scenario exists. An insurance agent calls his customer who basically just wants to pay premiums and not be bothered unless the customer has a question/claim. The agent, in doing his due diligence, may call this customer for several reasons, such as setting up a review of the insured’s insurance needs, reminding that payment is due (if an avoid lapse notice is received), soliciting additional lines of business to ensure appropriate protection of the customer’s assets, etc. It would not seem appropriate for this agent to be required to place the customer on the company’s do-not-call list; rather, the agent may find it beneficial to note the customer’s desire in the file

and handle accordingly. Ultimately, most businesses realize that upsetting the customer may potentially lead to lost business.

- **Paragraph 36 (pages 23 & 24):** The reasoning is solid; furthermore, more restrictive calling times should not be implemented whether or not a national do-not-call list is established. In short, “consistency” (i.e., between the FTC, FCC and state legislation) helps eliminate confusion/frustration for businesses and consumers.

2. Issues Relating to a National Do-Not-Call List

- **General comment/opinion:** If a national do-not-call list were implemented, it would seem that a one-stop number for eliminating these calls should also eliminate the need for separate state legislation. Furthermore, businesses could also rely on a one-stop source, rather than manage through federal and state lists. This, however, would require the cooperation of the states. Because state legislation varies, this would be a complex undertaking. For example, most states in our operating territory exempt insurance agents from the state’s do-not-call requirements. They are exempted specifically because they are insurance agents, or because the intent of their calls is to set up a subsequent, face-to-face meeting. These “live” solicitations (not recorded messages) help protect consumers against deceptive or abusive practices that arise where consumers have no direct contact (i.e., an invisible, anonymous seller). Furthermore, as indicated in paragraph 24 (page 16), legislative history suggests calls placed by “live” persons (i.e., our insurance agents and their staff) are less of a nuisance and invasion of privacy than artificial or prerecorded messages.
- **Paragraph 49 (pages 29 & 30):** Footnote 177 relates to the number of consumer complaints regarding telephone solicitations. While consumers may report complaints, what percentage of these complaints is determined to be justified/legitimate? For example, are some reported complaints over issues that are exempt under the regulations (i.e., regarding a call from a tax-exempt non-profit organization, established business relationship, etc.)?
- **Paragraph 52 (pages 30 & 31):** States with enacted do-not-call legislation and vendors can provide cost and administrative information regarding establishment and maintenance of a national database. In many states, small business owners (i.e., those with under five employees) can access the list at no cost. Also, does the potential exist for making the registry available through the FCC website (available by area code, then in numerical order)?
- **Paragraph 55 (page 32):** As the Federal Trade Commission (FTC) lacks jurisdiction over banks, common carriers, insurance companies, and certain other entities, it does not seem appropriate that the FCC should extend its authority to those entities that fall outside the FTC’s jurisdiction.
- **Paragraph 58 (page 34):** The FTC’s record keeping requirements are covered in section 310.5 of the proposed Telemarketing Sales Rule. Section 310.6(c) of the proposed rule exempts the following from the record keeping requirements: Telephone calls in which the sales of goods or services or charitable solicitation is not completed and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller. With respect to our insurance agents, the FTC does not have jurisdiction. If, however, the FCC adopts similar record keeping requirements, it would be appropriate to ensure the same exemptions. Additional record keeping requirements for small businesses are burdensome.

- **Paragraph 64 (page 36):** Collaboration with the states is imperative. Discussions should include, but not be limited to, state results/findings of how legislation affects consumers and businesses, benefits of a national do-not-call list, resource allocation, the burdens placed on businesses that bring revenue/jobs to the state (perhaps input from the Small Business Administration), etc.
- **Paragraphs 65 & 66 (pages 37 & 38):** If a national do-not-call list is implemented, there should be no need to have separate state legislation. This is confusing for consumers and businesses; furthermore, it's burdensome to legitimate small businesses that create jobs. Many potential small business entrepreneurs are hesitant to realize their dreams of owning their own business because of excessive regulation (federal, state, county, city, etc.).

Like so many initiatives, there is a potential for confusion on the part of consumers and businesses. Communication and education are critical to minimizing confusion and frustration. For example, notification of a national do-not-call list could be included in phone bills (and ad campaigns), with information on: the list; how it replaces state legislation; and where to find additional specifics (i.e., a website address). The FTC's website provides a valuable model; it contains easy-to-find information for consumers and businesses (i.e., Facts for Businesses – Complying with the Telemarketing Sales Rule, located under the Business Guidance icon).

Farmers companies would ask that the FCC consider our position and comments pertaining to these issues. Thank you and if you have any questions or would like to discuss alternative proposals that will better serve the consumers, FCC and insurers, please feel free to contact me.

Sincerely,



Eric G. Rizzo
Director of Federal Affairs
Farmers Group, Inc.
On behalf of the
Farmers Insurance Group®