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July 21, 2004

ELECTRONICALLY FILED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Ex Parte Presentation in
Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Dkt. No. 02-278.

Dear Ms. Dortch:

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee"), through undersigned counsel, submits this letter in support of the Petition of the Consumer Bankers Association for Waiver and Other Relief, filed in the above-referenced proceeding on January 28, 2004 (the "CBA Petition"). In accordance with the Commission's Rules, please file a copy of this letter in the public record of that proceeding.

The CBA Petition seeks two forms of limited relief from the Commission with respect to the caller identification requirements for telemarketers that became effective January 29, 2004, and that are codified at 47 C.F.R. § 64.1601(e)(1). Those rules require "entities engaged in telemarketing" to transmit the Calling Party Number (CPN) or automatic number identification (ANI) associated with the calling party's line, and, where available, the name of the telemarketer. *Id.* The rules permit telemarketers to substitute the name and customer service number of the "seller" on whose behalf the telemarketer is calling. Critically, the rules also require that the number transmitted in either case be a number that a call recipient can use to make a do-not-call request. *Id.* The Commission has explained that "[t]he existence of an established business relationship does not obviate these requirements."[1]

The CBA Petition asks the Commission to (1) confirm that business-to-business telemarketing calls are exempt from the rules; and (2) grant a partial waiver of the rules until January, 2005, to coincide with the compliance date for the revised junk fax rules. For the reasons set forth below, the Ad Hoc Committee urges the Commission to grant the CBA Petition with respect to both requests.

[1] FCC Public Notice in CG Dkt. 02-278, DA 04-206 (January 29, 2004).

While the Consumer Bankers Association represents leading members of a single industry – financial services – the Ad Hoc Committee's roster includes representatives of several industry sectors, including agricultural products, air travel, automobile and consumer products manufacturing, insurance and financial services, retailing, information technology products and services, consulting services, and others. The concerns that CBA's members have expressed in the CBA Petition are shared by members of the Ad Hoc Committee and the industries they represent.

In particular, some of the Ad Hoc Committee's members have encountered two types of obstacles in attempting to comply with the new caller ID rules:

(1) technical limitations of the telecom facilities and equipment they have deployed (and that the local exchange carriers (LECs) that serve them have deployed); and

(2) apparent regulatory impediments to the LECs' honoring their telemarketing customers' requests for substitution of a do-not-call number for the CPN or ANI of the calling party's line.

Although several parties have brought these and related issues to the Commission's attention,[2] the Commission has so far taken no action to address them. Both of these issues pose serious threats to businesses' ability to comply with the new caller ID rules, despite their best intentions and efforts.

As to the first issue, certain LECs have advised members of the Ad Hoc Committee that, where those members have analog trunks and PBXs, such facilities may be capable only of tranmitting the ANI associated with the calling party's line, a number that may not ring *anywhere,* much less at a location where the customer takes do-not-call requests. Although these companies have undertaken the replacement of analog facilities with digital upgrades – where feasible – the process is time consuming and breathtakingly costly. For these reasons, industry requires a grace period of at least one year, as the CBA Petition has requested, to come into compliance with the caller ID rules for telemarketers.

As to the second issue, this requirement for *telemarketers* conflicts with another provision of the FCC's caller ID rules, applicable to *carriers.* Subject to certain exceptions not relevant here, Section 64.1601(a) of the FCC's rules requires

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[2] *See, e.g.,* CBA Petition in CG Dkt. No. 02-278 (filed January 28, 2004), *supra*; Direct Marketing Association Petition for Reconsideration in CG Dkt. 02-278 (filed August 25, 2003) at 20-21; *cf. Ex Parte* letter filed by WorldCom, Inc. (d/b/a MCI) on October 22, 2003 in CG Dkt. No. 02-278; *see also* Report and Order in CG Dkt. 02-278, 18 FCC Rcd 14014 (released July 3, 2003) at ¶¶ 175-177.

> common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality . . . to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers.

47 C.F.R. § 64.1601(a). Section 64.1600(c) defines "calling party number" as "the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network." Because the FCC's caller ID rules applicable to carriers do not permit the carriers to transmit any number a telemarketer/subscriber may request, those rules effectively prohibit carriers from carrying out telemarketers' directions intended to comply with the telemarketers' caller ID requirements, *i.e.,* that they transmit a number the consumer can use to make a do-not-call request.

At least one LEC has confirmed that interpretation of the rules in communications to some of Ad Hoc's members, and, because of regulatory concerns, that LEC is resisting requests to transmit the telephone numbers consumers can use to ask those members to terminate telemarketing calls to them.

Interestingly, the FTC's companion rules[3] are not as stringent as the FCC's. In its Order amending the Telemarketing Sales Rule ("TSR"),[4] the FTC wrote that the number transmitted may

> include[ ] a number assigned to the telemarketer by its carrier, the specific telephone number from which a sales representative places a call, or a number used by the telemarketer's carrier to bill the telemarketer for a given call. . . . If the telemarketer transmits its own number, that number ideally should enable the consumer to communicate with the caller to assert a company-specific "do-not-call" request. Alternatively, telemarketers can forward consumers' return calls to a customer service line.

We are unaware of any plan by the FCC to eliminate *either* the inconsistency between its caller ID rules and those of the FTC *or* the conflict between its caller ID rules applicable to telemarketers and those applicable to LECs. Until these issues are involved, compliance with the telemarketing caller ID rules will be difficult if not impossible, as recent experience has demonstrated.

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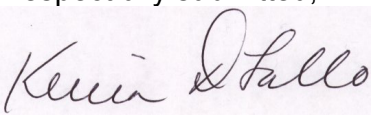
[3] 16 C.F.R. § 310.4(a)(7).

[4] 68 Fed. Reg. 4580, 4625 (January 29, 2003).

For all the foregoing reasons, the Commission should at least grant the limited relief the CBA Petition has requested, namely, to declare that business-to-business telemarketing calls are exempt from the caller ID rules, and to grant a partial waiver of the rules in the form of a grace period of one year from their effective date to give businesses the time they need to work through the technical and regulatory obstacles they face in complying. At the same time, the Commission should take steps to eliminate the regulatory inconsistencies described above.

We would be pleased to answer any questions you may have regarding the Ad Hoc Committee's position on the difficulties of complying with the caller ID rules for telemarketers, particularly in light of the inconsistency in the Commission's caller ID rules for telemarketers and for LECs. Please direct any questions to the undersigned.

Respectfully submitted,



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