

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**JOINT PETITION FOR RECONSIDERATION OF
MASS MARKETING INSURANCE GROUP, INC., AND
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

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The Federal Communications Commission’s (“FCC’s”) Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (the “Rules”) provide that a subscriber’s established business relationship with a particular business entity extends to affiliated entities so long as “the subscriber would reasonably expect them to be included given the *nature and type of goods or services offered by the affiliate* and the *identity of the affiliate*.”¹ Thus it has been established that a bank’s² established business relationship (“EBR”) with a customer extends to a bank affiliate, such as a mortgage lender, for the purpose of marketing to the bank’s customers products and services offered by the mortgage affiliate. Likewise, it has been established that a bank’s EBR with a customer extends to an affiliated insurance company for the purpose of marketing to the bank’s customers insurance products underwritten by the insurance affiliate.

¹ 47 C.F.R. § 64.1200(f)(3)(ii) (emphasis added).

² A “bank” has the same meaning as “depository institution,” as that term is defined at 12 U.S.C. § 1813(c)(1).

The Petitioners ask the FCC to determine that a bank's EBR with a customer extends to an affiliated insurance agency for the purpose of marketing to the bank's customers insurance products underwritten by an *unaffiliated* insurance company. Such a determination would recognize that the affiliation between the insurance agency and the bank is much more relevant to a customer's expectation of receiving a telemarketing call on behalf of the insurance agency than is any affiliation between the insurance company underwriting the insurance products being marketed and the bank. Such a determination also would recognize that insurance is just one of many financial products and services consumers have come to expect to be available through their unique relationship with a bank.

I. The Role of Banks in Insurance Marketing

Bank-affiliated insurance agencies have offered insurance products to bank customers for many years, although up until recently, there were questions both about the extent of their authority to do so and the role of the states in regulating such sales. That changed in 1999 with enactment of the Gramm-Leach-Bliley Act ("GLBA"),³ which clarified that banks were authorized to sell all lines of insurance through either an affiliate of a qualifying bank holding company⁴ or a financial subsidiary of a bank.⁵ Consequently, bank customers have come to expect banks to offer a wide variety of financial products and services, and they are not surprised when a bank affiliate markets what might be considered nontraditional financial products and services, such as insurance.

³ Pub. L. 106-102.

⁴ 12 U.S.C. § 1843(k).

⁵ 12 U.S.C. § 24a (national bank financial subsidiary); 12 U.S.C. § 1831w (state bank financial subsidiary).

While bank-affiliated insurance agencies form the nexus between the bank customer and the insurance company, banks themselves play a very important – and active – role in insurance marketing. They work closely with companies such as Mass Marketing Insurance Group, Inc. (“MMIG”), which provides direct marketing services to the insurance and financial services industries. MMIG helps banks market their products and services to bank customers, including insurance products offered by bank-affiliated insurance agencies, through direct mail, telemarketing, and statement inserts. Banks provide their marketing partners with customer lists, and they facilitate billing and other administrative services that are needed for the life cycle of the insurance relationship.

Banks, however, are very heavily regulated and wary of anything that would increase their reputation risk, and these concerns serve as a control mechanism that prevents third party service providers from engaging in abusive marketing activities. Banks closely oversee their partners’ interactions with bank customers. For example, a bank marketing insurance through an affiliate enters into agreements with the third parties involved, including telemarketers, to ensure compliance with all legal requirements. The third party also is required to adhere to all bank marketing policies, such as rules regarding advertising, the use of customer lists and information, and segmentation of the customer base. All of this management oversight helps to ensure that the core banking relationship is not harmed.

Because of the unique nature of the financial services relationship, the controls banks use to prevent abuse of that relationship, and the dual involvement of the bank and its affiliated insurance agency in the insurance relationship, a bank-affiliated insurance agency should be able to rely on the bank’s EBR to market insurance policies where

those policies are underwritten by an insurance company not affiliated with the bank. From the customer's viewpoint, there is no difference between an affiliated insurance agency marketing insurance products underwritten by an insurance company that is affiliated with the bank and an affiliated insurance agency marketing products underwritten by an insurance company that is not affiliated with the bank. The customer's expectation and experience is the same regardless of the insurance company's status as an affiliate or a non-affiliate of the bank. From the customer's viewpoint, especially when it comes to marketing, the insurance transaction is between the bank customer and the bank-affiliated insurance agency, not the insurance company. Indeed, Federal consumer protection regulations provide that an affiliated insurance agency is deemed to be acting "on behalf of" a bank if the agency uses the same name as the related bank (*e.g.*, X Bank and X Insurance Agency), and that is the case regardless of whether the insurance product being marketed by the affiliated insurance agency is underwritten by an unaffiliated insurance company.⁶

II. The Roles of the Insurance Company and the Insurance Agent in Insurance Marketing

The fact that insurance sold to a bank's customer through an affiliated insurance agency is underwritten by an unaffiliated insurance company should not negate the extension of the EBR from a bank to its affiliated insurance agency. The insurance

⁶ The "crossmarketing" of financial products and services, including insurance, by banks and their affiliated entities, as well as joint marketing partners (nonaffiliated entities), is addressed in the GLBA in several ways. Section 104 (15 U.S.C. § 6701) provides that a state may not "prevent or significantly interfere" with a bank's ability to crossmarket insurance products through other entities, and Title V (15 U.S.C. § 6801 *et seq.*) establishes restrictions on the use of customer information when crossmarketing financial products and services through nonaffiliated third parties. Pursuant to Section 305 (12 U.S.C. § 1831x), Federal financial regulators have issued regulations requiring an insurance agency acting "on behalf of" a bank to provide certain disclosures.

company and insurance agency have different roles, and the role of the insurance agent is most relevant for purposes of extending the EBR to a bank's insurance agency affiliate.

The primary role of an insurance company in the creation of an insurance relationship is that of a provider, or "manufacturer," of the insurance product. Most insurance products are sold through agents and brokers, and many consumers only have contact with their insurance agent – not with the insurance company. Many insurance agents are "independent" insurance agents – agents who are not associated with one particular insurance company and sell insurance for a number of insurance companies as the companies' appointed agents. Consumers see the insurance agent as the individual responsible for helping them buy and maintain an insurance policy and facilitate submission of any claims on that policy.

Consequently, the roles played by an insurance company and its agent are very different. The insurance company plays an important role, but through the consumer's eyes, it is the insurance agent who is central to the insurance transaction, the customer relationship, and customer expectations.

III. The EBR is Based Upon the Relationship Between the Sender of the Message and the Consumer.

The EBR carveout from the definition of "telephone solicitation"⁷ is based upon the relationship between the sender of the message and the consumer: if a company has an EBR with an individual, either because of a recent business transaction with, or inquiry from, the individual, the individual should not be surprised to receive a telephone call from the company for the purpose of marketing products and services. This is especially true in the financial services arena.

⁷ 47 C.F.R. § 64.1200(f)(9)(ii).

In its Report and Order issuing its Rules, adopted June 26, 2003 (the “Report”), the Commission said that consumer expectation dictates that a company be able to call an individual with whom it has an EBR. The Report states:

[The EBR] focuses on *the relationship between the sender of the message and the consumer*, rather than on the content of the message. It appears that consumers have come to expect calls from companies with whom they have such a relationship, and that, under certain circumstances, they may be willing to accept these calls.⁸ (emphasis added)

The Commission also determined that the type of product being marketed is less important than the ability of a company to market a variety of products and services to its customers. Specifically, when it issued the Rules, the Commission considered whether the definition of EBR should be modified to prohibit a company with a customer whose telephone number is listed on the national Do Not Call registry from using an EBR based on one type of product or service to call that customer to market another type of product or service. In rejecting such an approach, the Commission noted that companies often market a wide variety of products and services, and that “[r]estricting the EBR by product or service could interfere with companies’ abilities to market them efficiently. *As long as the company identifies itself adequately, a consumer should not be surprised to receive a telemarketing call from that company, regardless of the product being offered.*”⁹

(emphasis added)

⁸ Report at 64.

⁹ Report at 68.

IV. A Bank's EBR with a Customer Should Extend to an Insurance Agency Affiliate Marketing an Unaffiliated Insurance Company's Product, Because the Customer "Reasonably Expects" to be Offered Such Products as an Extension of the Customer's EBR with the Bank.

Banks no longer provide only checking accounts, savings accounts, and certificates of deposit. They also provide (often through their insurance agency affiliates) life, health, auto, and accident insurance, as well as debit and credit cards, securities, debt waiver contracts, and investment advisory services. The principal basis for this expanded authority is the Gramm-Leach-Bliley Act ("GLBA"), which added Section 4(k) to the Bank Holding Company Act of 1956. The Bank Holding Company Act permits a bank holding company to engage in activities that are "financial in nature."¹⁰ Consequently, bank customers have come to expect to be offered a variety of financial products and services from banks via "one-stop" shopping. They expect a bank to satisfy many (if not all) of their financial needs through a variety of marketing methods, including telemarketing.

Clearly, if an insurance company is owned by a bank holding company, which is permitted by the GLBA, a bank's EBR extends to the affiliated insurance company and the affiliated insurance agents. A bank customer would not be surprised to receive a telemarketing call from an affiliated insurance company's agent. Because the nature and type of goods offered by an affiliated insurance company would be identical to the nature and type of goods offered by a non-affiliated insurance company, the EBR also should extend to an insurance agency affiliate offering products on behalf of an insurance company not affiliated with the bank.

¹⁰ 12 U.S.C. § 1843(k).

Moreover, extension of the EBR only when marketing an affiliated insurance company's products would create an unlevel playing field because of differences in how banks structure their insurance operations. Large banks are more likely than small banks to have an affiliated insurance company within a parent holding company. Small banks often have only an affiliated insurance agency, housed in a bank subsidiary, which markets insurance products underwritten by a nonaffiliated insurance company. Limiting the EBR to the telemarketing of an affiliated insurance company's products would place small banks at a competitive disadvantage compared to large banks.

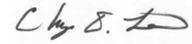
Conclusion

A bank's established business relationship with an individual should be extended to a bank insurance agency affiliate marketing an unaffiliated insurance company's products. Banking laws limit the products and services a bank and its affiliates are permitted to offer. Those include common banking products and services, as well as products and services that are "financial in nature," specifically insurance products. Bank customers have come to expect banks to market insurance products through various marketing media. A customer would "reasonably expect" a bank's insurance agency affiliate to be able to use the bank's EBR to market insurance products. Consequently, Petitioners ask the Commission to establish the following "bright-line" rule: "A bank's established business relationship extends to an insurance agency affiliate for the purpose of marketing an unaffiliated insurance company's insurance products." Such a rule falls

within consumer expectations regarding the marketing of financial products and services while maintaining the integrity of the EBR exception to the Do Not Call rule.

Respectfully submitted,

McINTYRE LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Chrys D. Lemon".

Chrys D. Lemon

Cc: Erica McMahon