

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

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

REPLY COMMENTS OF SILVERLEAF RESORTS

Silverleaf Resorts, Inc., (“Silverleaf”) files these comments in reply to the comments of the Nebraska Public Service Commission, Indiana Attorney General (“In. A.G.”), American Teleservices Association (“ATA”), and the Direct Marketing Association (“DMA”) in the above referenced matter. For the reasons below, Silverleaf urges the FCC maintain the five year expiration period for names on the national Do-Not-Call Registry, implement necessary procedures to improve the accuracy of names on that list, and explicitly preempt contrary state law.

These comments reply to trade organizations and government entities which have stated positions both opposed and in favor of the elimination of the five-year expiration period.

I. Nature of Business

Silverleaf has provided quality family vacations since 1989. The company started with seven resorts located in Texas and Missouri, became a public company in 1997, and has since added resorts in additional states including Illinois, Massachusetts, Georgia, and Florida. Silverleaf provides great vacation experiences and quality resorts at affordable prices serving hundreds of thousands of consumers at getaway and destination resorts.

Silverleaf markets its products via word of mouth referrals, telephone and other advertising.

II. Comments on Elimination of Five Year Period

Consumers signed onto the national Do-Not-Call Registry with the expectation that their names would be removed from the list after five years. Nothing has changed that expectation.

A. Turnover in Numbers, Inaccuracy of List

As set forth in the ATA's comments, numbers have not been removed from the registry when they are disconnected or reassigned. Currently, the FCC removes numbers only when they have been disconnected and reassigned.

There are significant constitutional problems with leaving a number on the list when it is no longer held by the consumer who originally made the do-not-call request. Removing the five year expiration period for these numbers would magnify this problem.

If the Registry is not accurately cleansed, it will only grow larger indefinitely, with no relation to actual consumer desires, and hurt or destroy Silverleaf's efforts in this medium.

B. Expectations of Consumers

Despite the comment of the Nebraska Public Service Commission, consumers clearly were aware of the expiration of their do-not-call registration after five years (they signed onto the list in 2003). The expiration period was disclosed on the website and in the regulation.

Further, the FCC and FTC have repeatedly stated how easy it is for consumers to add their names onto the registry, thus there is no consumer harm from removing numbers from the list after the expiration of the five year period.

III. Preemption

The FCC still has not resolved the most important issue facing businesses that place telephone calls, consumers who receive telephone calls, and regulators who enforce state and federal laws. This issue is whether the federal standards for telemarketing set forth in the TCPA and the Telemarketing Sales Rule preempt contrary state law as applied to interstate calls.

In its 2003 Report & Order, the Commission explained that "any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted." Report & Order, 18 FCC Record, 14014 ¶ 84 (2003).

Since then, businesses have sought preemption from the FCC and these petitions have not been ruled on. In his comment to this proposed rule, the In. A.G. urged the Commission to back down from this previous statement and not preempt state laws as applied to interstate telephone calls. It is the position of the In. A.G. that there is "no merit to petitioners' assertions that it is difficult or expensive to comply with multiple telemarketing laws and that state laws are constantly changing." This statement could not be more untrue. With more than 50 jurisdictions potentially regulating Silverleaf's activities, it is subject to a "patchwork quilt" with contrary and conflicting state laws and differing established business relationship periods, differing state do-not-call requirements, and even state laws purporting to apply differing standards than those set forth in the TCPA to the federal Do-Not-Call Registry. See e.g., California Business & Professions Code § 17592(e)(4) which applies a 30 day inquiry standard limiting the established business relationship exemption as applied to the federal Do-Not-Call Registry.

As urged by the ATA and the DMA, preemption is necessary and would serve consumers and businesses by providing a uniform set of rules applicable to these calls, and would not prevent regulators from protecting those citizens, as both the TCPA and the Telemarketing Sales Rule allow state enforcement of their terms.

IV. Conclusion

While the actions of the FCC with regard to the five year expiration period may be made moot by the “Do-Not-Call Improvement Act of 2007” (H.R. 3541, S.2096), the issues of list accuracy and preemption still are extremely important, and the FCC should move in a timely fashion on these issues.

For the above reasons, based on the expectations of consumers, the flaws and turnover in ownership of telephone numbers, and the ease with which consumers have proven their ability to register for the national Do-Not-Call Registry, Silverleaf urges the FCC to maintain the current standards for expiration of numbers from the national Do-Not-Call Registry.

Respectfully Submitted,

SILVERLEAF RESORTS

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