

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

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

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ replies to comments that were filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) November 27, 2007 *Notice of Proposed Rulemaking* (“*Notice*”) in this proceeding.² In the *Notice*, the Commission proposes to require telemarketers to honor registrations on the national registry for consumers who do not wish to receive telemarketing calls (“Registry”) beyond the current five-year registration period.³ To effectuate this change, the Commission proposes eliminating the requirement in 47 C.F.R. § 64.1200(c)(2) that telemarketers must honor such registrations for five years.⁴

¹ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² FCC 07-203, 22 FCC Rcd 21237 (2007); 72 Fed. Reg. 71,099 (December 14, 2007).

³ *Notice*, ¶ 1.

⁴ *See id.*, Appendix A.

Only one of the commenting parties – the National Association of Realtors (“NAR”) – opposes the Commission’s proposal.⁵ NAR’s one-page comments expressed a concern that, if the five-year limit on honoring do-not-call registrations is eliminated, “all invalid numbers not properly scrubbed from the list will also remain on the list indefinitely.” This, according to NAR, “may impose a disproportionate economic burden on small businesses unless the FCC can ensure the effective and efficient use of technology to eliminate all telephone numbers no longer belonging to original Do Not Call registrants.”

NAR’s concerns, however, have little relevance to the issue of whether the Commission should adopt the proposed rule. The Commission noted that, in light of Congressional consideration of permanent do-not-call registrations, the Federal Trade Commission (“FTC”) has committed not to drop any number from the Registry until final Congressional or FTC action on the matter.⁶ As NASUCA pointed out, the proposed rule merely requires telemarketers to refrain from calling a number listed on the Registry, no matter when the number was originally placed on the Registry.⁷ The proposed rule is thus consistent with the FTC’s rule, which contains no five-year limitation, and avoids confusion on the part of both telemarketers and consumers.⁸

In addition, the proposed rule should not impose any additional economic burdens on small businesses. The Registry’s administrator would still conduct the purging of

⁵ Other comments, in addition to NASUCA’s, were filed by the American Teleservices Association (“ATA”), the Direct Marketing Association (“DMA”), the Newspaper Association of America (“NAA”), Bank of America, the Nebraska Public Service Commission (“NPSC”), Donald J. Elardo (“Elardo”) and the Matanuska Telephone Association (“MTA”).

⁶ *Notice*, ¶ 11. See also DMA Comments at 2; MTA Comments at 3-4.

⁷ NASUCA Comments at 4.

⁸ *Id.* at 4-5.

numbers on the Registry. Telemarketers would only be required to purchase the Registry, as they are now required to do. As for any economic “burden” caused by telemarketers’ inability to call numbers listed on the Registry, NASUCA concurs with the Commission’s tentative conclusion that “the enhanced consumer privacy protections created by this proposed rule amendment, taken in conjunction with the benefits to the federal government in administering the National Registry, outweigh any potential impact” on telemarketers.⁹ Five years ago in this docket, the Commission determined that “telemarketing calls are a substantial invasion of residential privacy....”¹⁰ Preventing or reducing the intrusion of telemarketing calls in consumers’ lives outweighs any economic “burden” placed on businesses who desire to invade consumers’ privacy.

Although other telemarketing interests do not oppose the proposed rule, their non-opposition seems to be conditioned upon a perceived need to make changes to the current process for maintaining the Registry. ATA professes its support for the Commission’s proposal “provided the Commission ensures that adequate hygiene is performed on the Registry to guaranty that telephone numbers are removed when they are disconnected or reassigned.”¹¹ Both ATA and NAA urge the Commission to ensure that disconnected numbers are purged more than once a month.¹²

DMA calls on the Commission to remove disconnected numbers promptly from the Registry, to remove business numbers from the Registry and to segregate landline

⁹ *Notice*, ¶ 12.

¹⁰ Report and Order, 18 FCC Rcd 14014 (2003) (“2003 Report and Order”), ¶ 66.

¹¹ ATA Comments at 1. See also NAA Comments at 2-3; Bank of America Comments at 2.

¹² ATA Comments at 4-6; NAA Comments at 3-4.

numbers from wireless numbers on the Registry.¹³ DMA, however, does not explain what it means by “segregate wireless numbers from the Registry.”¹⁴ By using the phrase “cluttering the Registry with wireless numbers,”¹⁵ DMA appears to want complete removal of wireless numbers from the Registry.¹⁶ On the other hand, DMA urges the Commission to “work with the FTC to segregate wireless numbers on the list from landline numbers.”¹⁷ This phraseology indicates that wireless numbers should remain on the list, but be separately identified from wireline numbers for scrubbing purposes. Either way, number portability may make it difficult to determine whether a number is wireline or wireless at a given time. DMA also asks the Commission to address preemption matters that have been raised in various petitions filed at the FCC.¹⁸

The issues raised by the telemarketing interests have nothing to do with the subject at hand, i.e., whether the Commission should eliminate the five-year limit on honoring consumer registrations in the Registry.¹⁹ The Commission can, and indeed should, adopt the proposed rule without first taking the actions recommended by the telemarketing interests. As NASUCA noted, the proposed rule is in sync with the FTC’s rule governing the Registry, and thus adopting the proposed rule would make the

¹³ DMA Comments at 2.

¹⁴ Id.

¹⁵ Id.

¹⁶ This would appear to be inconsistent with the operation of DMA’s former Telephone Preference Service, which allowed consumers “to register their wireless phone numbers in order to ensure that they do not receive telemarketing calls on their wireless phones.” 2003 Report and Order, ¶ 163. NASUCA opposes attempts to bar wireless numbers from the Registry.

¹⁷ DMA Comments at 2.

¹⁸ Id. at 3. See also ATA Comments at 2, n. 1.

¹⁹ NASUCA, however, states its opposition to preemption of state do-not-call laws that provide consumers with more protections than the federal law.

Commission's rule consistent with the FTC's rule.²⁰ Adopting the proposed rule would also increase consumer protection and provide considerable public benefits.²¹

In that regard, NASUCA reiterates its recommendation that the Commission eliminate the five-year limitation on company-specific do-not-call lists found in 47 C.F.R. § 1200(d)(6). The FTC places no such limit on company-specific requests: "Once the consumer asks to be placed on the seller's 'do-not-call' list, **the seller may not call the consumer again** regardless of whether the consumer continues to do business with the seller."²² Even an ongoing business relationship does not change the open-ended nature of the FTC's rule: "If the consumer continues to do business with the seller after asking not to be called, the consumer *cannot* be deemed to have waived his or her company-specific 'do-not-call' request."²³ The Commission should provide the same protection in its rules.

The subjects raised by the telemarketing interests need not be resolved as part of the Commission's consideration of the proposed rule. The Commission should not delay adopting the proposed rule to address the peripheral matters raised by the telemarketing interests. The Commission should quickly adopt the proposed rule.

Respectfully submitted,

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²⁰ NASUCA Comments at 4.

²¹ Id. at 5; NPSC Comments at 2; Elardo Comments at 1-2; MTA Comments at 3.

²² FTC, Telemarketing Sales Rule, Final Amended Rule, 68 Fed. Reg. 4580, 4634 (January 29, 2003) (emphasis added).

²³ Id. (emphasis in original).

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