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

The benefits of requiring written consent for telephone solicitations will likely outweigh the burden on the telemarketing industry, if "written consent" is defined to incorporate electronic manifestations of consent, as described by the E-SIGN Act.

1. A written consent requirement for telephone solicitations will yield manifold benefits, but two are particularly notable.

This requirement, as described in the proposed rulemaking, would reconcile the FCC rules for 'robocalling' with the existing FTC regulations and reign in the telemarketing practices of industries currently outside the FTC's jurisdiction – telephone companies, airlines, banks, and insurance companies. Second, the written consent requirement will help protect individuals' fundamental right to privacy and reduce telemarketing fraud, which according to Department of Justice estimates, costs about $40 billion annually.[1]

2. The hardship to the telemarketing industry will be rendered negligible by the approval of electronic forms of written consent as prescribed by the E-SIGN Act.

By allowing electronic signatures indicating consent, potential customers to telemarketing solicitations can indicate assent by means of a secure and simple method. This streamlined means of communication reduces or eliminates the costs[2] to the telemarketing industry that likely concerned Congress twenty years ago when there was no Internet, and the

[1] FTC's Telemarketing Fraud: Ditch the Pitch webpage, http://www.ftc.gov/bcp/conline/edcams/telemarketing; DOJ Economic Crime Unit Website, http://www.fbi.gov/hq/cid/fc/ec/about/about_tm.htm.

[2] For example, a recent study concluded that processing a paper based expense report in the private sector costs approximately $36.00. The electronic version of the same expense report costs $4.00 to process. http://www.da.ks.gov/itec/PKI/digsigwhitepaper.doc. And in a comparison of paper and digital signature costs, a sample company paper-signing 7000 documents per year will spend roughly $700,000 to do so over three years, while electronically signing those documents will accumulate to only $55,000 in costs over three years. http://myonelogon.net/downloads/WP_mySignatureBook.pdf.

representatives necessarily reflected on the potential burden on telemarketers resulting from requiring old-fashioned, pen-to-paper signatures.

Of course, the ease with which an electronic form can be used to ascertain consent could be a double-edged sword. While there is inherent cost-effectiveness when a mouse-click replaces a handwritten signature, the ease with which digital documents can be altered without detection increases the risk of fraud for such exchanges. But these and other potential pitfalls[3] can be adequately addressed with stringent procedural requirements for obtaining electronic 'written consent,' such as the 4-point criteria that many electronic signature statutes already employ: the signature must be (1) unique to the person using it, (2) capable of verification, (3) under the sole control of the person using it, and (4) linked to the data in such a manner that if the data is changed, the signature is invalidated.[4]

3. Conclusion

Thus, the written consent requirement described in the FCC's proposed rulemaking will provide various benefits, such as reconciling the FCC's regulations on 'robocalls' with the existing FTC rules, and protecting against both violations of individual rights and telemarketing. Moreover, these benefits will far outweigh any potential burden placed on telemarketers if the written consent requirement is defined to include electronic forms of 'written consent,' as conceived in the E-SIGN Act.

[3] http://www.ftc.gov/os/2001/06/esign7.htm#IV.%20Analysis%20of%20The%20Issues.

[4] *See* U.S. Comptroller General, Matter of National Institute of Standards and Technology" Use of Electronic Data Interchange Technology to Create Valid Obligation , 71 Comp. Gen. 109 (1991); (Dec. 13, 1991); CAL. GOV'T. CODE §16.5 (West 1999); 205 ILL. COMP. STAT. 705/5 (West 1998); GA. CODE ANN. § 10-12-4 (Michie 1998).The UNCITRAL Model Law also provides a reasonable set of criteria for recognizing electronic signatures as legally binding; it requires that: 1) an electronic signature must include a method to identify the signer, 2) an electronic signature must include a method to indicate the signer's approval of the information contained in the message, and 3) the method used must be as reliable as was appropriate for the purpose for which the message was generated or communicated. See United Nations, UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996, Article VII, ¶ 1.