RE: CG Docket No. 02-278

Dear FCC Commissioners,

Thank you for this opportunity to comment on the proposed revisions to the Telephone Consumer Protection Act (TCPA). As an individual who has twenty plus years of industry experience it is my hope that I can provide relevant comments and insight and opinions that will be helpful to the Commission. My comments will address the following:

1. **The proposed amendment that would require INTRASTATE sellers and telemarketers to obtain telephone subscribers' expressed written consent (including electronic methods of consent) to receive prerecorded telemarketing calls even when there exists an established business relationship.**
2. **The proposed amendment that would require that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may "opt out" of receiving future prerecorded messages from a seller or telemarketer.**
3. **Should the FCC conform its rules to the FTC's Telemarketing Sales Rule eliminating the established business relationship exemption for the general prohibition on prerecorded telemarketing calls to residential telephone lines?**
4. **Contacting consumers via their wireless cell phone.**

(1) The proposed amendment that would require INTRASTATE sellers and telemarketers to obtain telephone subscribers' expressed written consent (including electronic methods of consent) to receive prerecorded telemarketing calls even when there exists an established business relationship.

I am opposed the amendment Requiring INTRASTATE sellers and telemarketers to obtain telephone subscribers' expressed written consent (including electronic methods of consent) to receive prerecorded telemarketing calls even when there exists an established business relationship. The written consent requirement unduly interferes with the ongoing business relationships of sellers and customers and is unnecessary and overly burdensome to small local businesses.

Persons of reasonable intelligence know that there are dramatic differences with respect to interstate and INTRASTATE telemarketing calls when a business relationship exists. The vast majority of INTRASTATE calls could be characterized as local calls from local businesses that are easily recognizable to the call recipient. INTRASTATE telemarketing calls placed by small local sellers who have an established business relationship with the call recipient do not adversely affect residential subscriber's privacy interests. Since small local businesses are easily recognizable by their customers they are much more likely to rely on their own self interest to retain existing customers therefore the potential for consumer abuse is very low.

The current FTC's "expressed written consent" rules were adopted to address the abusive telemarketing practices associated with FTC regulated Interstate call abuse which typically involve Interstate companies with large interstate call lists in which calls are placed by sellers who are not readily recognizable to the call recipient, who do not have an existing business relationship with the call recipient and/or are calling consumers who's phone numbers are on the National Do Not Call Registry. Prior to the FTC adopting the written consent requirement pre-existing rules had already properly

addressed these patterns of abuse by prohibiting the sending of unsolicited telemarketing messages as well as sending unsolicited telemarketing messages to those on the National Do Not Call Registry.

To place a "written consent" burden on small local INTRASTATE companies who are recognizable to their local customers is overreaching and unnecessary. Small local INTRASTATE companies are far less likely to engage in excessive or abusive message delivery. Consider the small lawn service or snow removal company (or any other local INTRASTATE company) that sends prerecorded messages to their customers. It would be reasonable that a Local lawn and/or snow removal company would find it cost effective and consumer friendly to place prerecorded calls asking customers if they would like to resume seasonal lawn or snow removal. In this scenario I think everyone would agree that the consumer would ordinarily appreciate a seasonal sales call from their local lawn or snow removal company. This type of solicitation would most likely be preferred by the call recipient as opposed to a burdensome unexpected knock on the door asking for a signature or being told they must take the time and effort to pursue some electronic means by which to receive the wanted call.

The Commission should be mindful of the legitimate interests of both sellers and consumers who do in fact have an existing business relationship. The existing Established Business Relationship exemption for INTRASTATE sellers is appropriate for the vast majority of all INTRASTATE calls on the basis that these calls should be deemed as invited or permitted in light of the more localized established INTRASTATE business relationship. A written consent rule including consent via electronic methods will be a burden to small business as well as to the subscribers who wish to receive these telephone solicitations. The undue burden to the local small business to either hire a costly live telemarketer, collect and maintain signatures, or be forced into creating and maintaining the same using an electronic method at the very least interferer's with the ongoing business relationships of sellers and customers, is unduly burdensome and is not necessary. INTRASTATE calls from small local businesses when an established business relationship exists do not adversely affect residential subscriber's privacy interests.

For the reasons explained above the Commission should not require sellers and telemarketers to obtain telephone subscribers written consent electronic or otherwise with respect to INTRASTATE calls.

(2) Requiring that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may "opt out" of receiving future prerecorded messages from a seller or telemarketer.

I support an automated opt out mechanism that provides the consumer with a quick and easy way to immediately opt out of receiving future calls. This automated opt out mechanism is good for both the seller and the consumer. If this rule is adopted then consumers would be far more supportive of the use of prerecorded telemarketing messages by both interstate and intrastate sellers with whom they have established business relationships.

This automated opt out mechanism should be adopted as an alternative to the overly burdensome and inappropriate written consent requirement. The commission should recognize that the FTC overzealously decided to unduly interfere with the ongoing business relationships of sellers and customers by adopting the overly burdensome and unnecessary written consent requirement in addition to the automated opt out requirement. If it is truly the Commissions desire not to "unduly interfere with the ongoing business relations of businesses" then the Commission has an opportunity to

do the right thing by adopting the automated opt out requirement as an alternative to the overly burdensome and unnecessary written signature requirement.

(3) **Should the FCC conform its rules to the FTC's Telemarketing Sales Rule eliminating the established business relationship exemption for the general prohibition on prerecorded telemarketing calls to residential telephone lines.**

The Commission should not conform its rules to the FTC's Telemarketing Sales Rule. The FTC overzealously decided to unduly interfere with the ongoing business relationships of Interstate sellers and customers by adopting the overly burdensome and unnecessary written consent requirement rather than adopting the mandatory automated opt out as an alternative.

The success of the National Do Not Call Registry, along with the now proposed "automated opt mechanism" requirement if adopted would provide consumers with an unprecedented ability to control unwanted calls as well as calls initiated by businesses where an established business relationship exists and the subscribers privacy interests are not adversely affected.

A decision to conform the FCC INTRASTATE rules to the FTC interstate rules would be inappropriate and confusing to both local businesses and local consumers. The burden and confusion associated with the elimination of the established business relationship exemption would target local consumers who would otherwise want to receive solicitations from local businesses when an established business relationship exists.

(4) Contacting consumers via their wireless cell phone.
I would ask that the Commission recognize the fact that INTRASTASTE businesses that have have an established business relationship with the called party should not be prohibited from contacting consumers via their wireless cell phone.

Many businesses customers find it convenient to receive business communications via their cell phone. The rapid growth and popularity of cell phones verses traditional land lines means that a cellular telephone number is very often the primary phone number for many who wish to receive prerecorded calls from INTRASTATE businesses when there exists a business relationship.

Thank you for allowing me this opportunity to share my comments.

Sincerely,
Lester Morales
SC&C Inc.