

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

In re: Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order (adopted September 12, 2002)

I fully support today's Notice to re-examine our implementation of the Telephone Consumer Protection Act. Since I became a Commissioner, I have repeatedly emphasized the obligations of this Commission to protect consumers from irresponsible business practices. While I continue to believe that markets more effectively deliver consumer benefits than regulation ever can, a regulatory agency takes on additional specific responsibilities in a competitive market that never existed under a monopoly regime. The Commission must rise to the challenge of a regulatory agency in a competitive age and today's decision is a positive step in that direction.¹

As previously stated,² the protections created by the TCPA are among the most important activities this Commission undertakes to improve the daily lives of the public. I will continue to work with my fellow Commissioners and our Consumer and Governmental Affairs Bureau to ensure that the American people are fully aware of their rights under the Act and the Commission's efforts to enforce our rules. In this regard, I have been particularly heartened by recent tough enforcement action taken against unsolicited fax advertisers.³ We are fully committed to increasing public awareness about these rules and strictly enforcing them.

Today's Notice takes our efforts to another level. It has been 10 years since the Commission promulgated rules under the TCPA. In the intervening decade, there have been tremendous changes in both the communications capabilities of everyday Americans and the tools available to marketers. We have an obligation to examine those changes and adapt our rules to that new reality. I have followed the efforts of the FTC in re-examining their rules and I support our similar action today. In examining these issues, I am particularly concerned about the burdens imposed on consumers to express -- on a company-by-company basis -- their desire to be placed on a do-not-call list. In light of the technological tools now available, I believe the

¹ Kathleen Q. Abernathy, *A Regulatory Agency for a Competitive Age: Harnessing the Chaos*, Commissioner's remarks at May 22, 2002 Press Breakfast, available at <http://www.fcc.gov/Speeches/Abernathy/2002/spkqa213.html> ("We must continually refine our mission at the Commission to best respond to changed conditions."). *My View from the Doorstep of FCC Change*, 54 Fed. Comm. L.J. 2, 202 (2002) ("Unsolicited faxes certainly do not grab headlines in the way free political advertising does, but that is not the standard by which we should assess the FCC's job performance. Therefore, I believe that the Commission should devote additional resources to enforce our rule prohibiting unsolicited faxes. I have been heartened by the Commission's increased enforcement efforts in this area over the past few years. In addition, the FCC should step up its efforts to inform consumers of their rights under the TCPA. Only with these efforts will the Commission fulfill the statutory mandate and the prioritization inherent in the TCPA.").

² Kathleen Q. Abernathy, *Do-Not-Call Lists*, 2 Focus on Consumer Concerns 1, (January – February 2002) available at <http://www.fcc.gov/commissioners/abernathy/news/donotcall.html>.

³ See Fax.com Apparent Liability for Forfeiture, File No. EB-02-TC-120 (released August 7, 2002)(Issuing a Notice of Apparent Liability in the amount of \$5,379,000). 21st Century Faxes Ltd., Forfeiture Order, File No. EB-00-TC-174, 17 FCC Rec. 1384 (released January 11, 2002)(Issuing a Forfeiture in the amount of \$1,107,500).

time has come to examine the effectiveness of a national do-not-call list. Current state policy efforts, implementation issues, and the efforts of private parties will each inform my consideration of these issues. However, I am committed to using the full resources of this Commission to ensure that consumers have a reliable and simple way to stop undesired telemarketing calls.

I am also increasingly concerned about the possibility of telemarketing calls to wireless phones by autodialers or using prerecorded messages. There have been sporadic reports of violations of our current ban on such calls. The Commission will continue to vigorously enforce this ban. However, as technology evolves, we must remain vigilant that such calls not take place. I am particularly concerned that when local number portability is implemented for wireless devices late in 2003, telemarketers will not be able to readily distinguish landline phone numbers from wireless numbers. The marketing industry, carriers, consumers, and the Commission will need to work together to develop solutions that implement our bar against wireless calls from autodialers and the use of prerecorded messages even after local number portability is a reality.