Before the
Federal Communications Commission
Washington, D.C. 20554

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

Adopted: February 10, 2005 **Released: February 18, 2005**

By the Commission: Chairman Powell issuing a statement.

I. INTRODUCTION

1. In this Second Order on Reconsideration (*Order*) in the above captioned proceeding, we address certain issues raised in petitions for reconsideration of the Report and Order (*2003 TCPA Order*)[1] implementing the Telephone Consumer Protection Act of 1991 (TCPA).[2] In so doing, we address issues raised on reconsideration regarding the national do-not-call registry and the Federal Communications Commission's (Commission's) other telemarketing rules.[3]

2. Specifically, we clarify that calls made for the purpose of debt collection are not required to identify the caller's state-registered name in prerecorded messages if doing so would conflict with federal or state laws. We also clarify that bill messages satisfy the requirement on common carriers to provide an annual notice to subscribers of the opportunity to register with the national do-not-call list. In addition, while we decline to reconsider the rules establishing the national do-not-call registry, we clarify application of the "established business relationship" exemption as well as the rules on maintaining company-specific do-not-call lists.

[1] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

[2] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.* For a list of petitions filed, *see* Appendix B.

[3] The Commission will address separately issues related to the facsimile advertising rules, including issues raised about the Regulatory Flexibility Analysis.

II. BACKGROUND

A. Telephone Consumer Protection Act of 1991

3. On December 20, 1991, Congress enacted the TCPA in an effort to address a growing number of telephone marketing calls and certain telemarketing practices Congress found to be an invasion of consumer privacy and even a risk to public safety.[4] The statute restricts the use of automatic telephone dialing systems, of artificial or prerecorded voice messages, and of telephone facsimile machines to send unsolicited advertisements.[5] Under the TCPA, those sending fax messages or transmitting artificial or prerecorded voice messages are subject to certain identification requirements.[6] The statute also provides consumers with several options to enforce the restrictions on unsolicited marketing, including a private right of action.[7] The TCPA requires the Commission to prescribe regulations to implement the statute's restrictions on the use of autodialers, artificial or prerecorded messages and unsolicited facsimile advertisements.[8] In addition, the TCPA requires the Commission to "initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights"[9] and specifically authorizes the Commission to "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations."[10]

4. In 1992, the Commission adopted rules implementing the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining do-not-call lists.[11] On July 3, 2003, the Commission revised the TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations. Specifically, the Commission established a national do-not-call registry that would be jointly implemented by the Federal Trade Commission (FTC) and this Commission. The national registry, which went into effect on October 1, 2003, supplements the long-standing company-specific do-not-call rules which require companies to maintain lists of consumers who ask not to be called by a particular company.[12] To address the more prevalent use of predictive dialers, the Commission determined that a telemarketer may abandon no more

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[4] *See TCPA*, Section 2(5), *reprinted in* 7 FCC Rcd 2736 at 2744.

[5] 47 U.S.C. § 227(b)(1).

[6] 47 U.S.C. §§ 227(d)(1)(B) and (d)(3)(A).

[7] The TCPA permits consumers to file suit in state court if an entity violates the TCPA prohibitions on the use of facsimile machines, automatic telephone dialing systems, and artificial or prerecorded voice messages and telephone solicitation. 47 U.S.C. §§ 227(b)(3) and (c)(5).

[8] 47 U.S.C. § 227(b)(2).

[9] 47 U.S.C. §§ 227(c)(1)-(4).

[10] 47 U.S.C. § 227(c)(3).

[11] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*); *see also* 47 C.F.R. § 64.1200. In 1995 and 1997, the Commission released orders addressing petitions for reconsideration of the *1992 TCPA Order*. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995) (*1995 TCPA Reconsideration Order*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Order on Further Reconsideration, 12 FCC Rcd 4609 (1997) (*1997 TCPA Reconsideration Order*).

[12] 47 C.F.R. §§ 64.1200(c) and (d). *See 2003 TCPA Order*, 18 FCC Rcd 14014 (2003); *Mainstream Marketing Services, Inc. v. Federal Trade Comm'n*, 358 F.3d 1228 (10th Cir. 2004) (upholding the constitutionality of the national do-not-call registry), *cert. denied*, 2004 WL 2050134 (U.S. Oct. 4, 2004) (No. 03-1552).

than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call.[13] The rules also require all companies engaged in telemarketing to transmit caller identification (caller ID) information, when available, and prohibit them from blocking such information.[14]

B. Petitions For Reconsideration

5. The Commission received numerous petitions for reconsideration and/or clarification of the telemarketing rules following release of the *2003 TCPA Order*. Petitioners raise issues related to the national do-not-call registry, the company-specific do-not-call rules, the restrictions on prerecorded messages, and rules addressing the use of predictive dialers.

III. DISCUSSION

A. National Do-Not-Call Rules

1. National Do-Not-Call Registry Compliance

6. In the *2003 TCPA Order*, the Commission adopted a national do-not-call registry, in conjunction with the FTC, to provide residential consumers with a one-step option to prohibit unwanted telephone solicitations.[15] Telemarketers are prohibited from contacting those consumers that register their telephone numbers on the national list, unless the call falls within a recognized exemption. We explained that calls that do not fall within the definition of "telephone solicitation" as defined in section 227(a)(3) are not restricted by the national do-not-call list. These may include surveys, market research, political and religious speech calls. The national do-not-call rules also do not prohibit calls by or on behalf of tax-exempt nonprofit organizations, calls to persons with whom the seller or telemarketer has an established business relationship, calls to businesses, and calls to persons with whom the marketer has a "personal relationship."[16]

7. A number of petitioners raise questions related to the administration and operation of the national do-not-call registry.[17] The DMA requests that the Commission review the national do-not-call registry set up by the FTC and reconsider our rules to impose more reasonable security procedures for the registry.[18] In addition, the DMA asks the FCC to require the DNC list administrator to provide a mechanism by which callers can download the national list without wireless numbers.[19] Several other

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[13] 47 C.F.R. § 64.1200(a)(6).

[14] 47 C.F.R. § 64.1601(e).

[15] *2003 TCPA Order*, 18 FCC Rcd at 14034, para. 28.

[16] *2003 TCPA Order*, 18 FCC Rcd at 14039-40, para. 37.

[17] *See, e.g.,* ARDA Petition; Brown Petition (asking the Commission to determine that telemarketers must update their call lists on a daily basis using the national do-not-call registry); DMA Petition; Independent Insurance Agents Petition; NAR Petition; State and Regional Newspaper Petition at 6 (arguing that the Commission overlooked the adverse impact of its rules on the circulation of newspapers—an activity that they argue is protected by the First Amendment). *See also* ATA Opposition at 9; Shields - DMA Opposition at 2.

[18] DMA Petition at 12-15 (contending that the list should not contain business numbers or numbers not registered by subscribers of those numbers).

[19] DMA Petition at 11-12 (arguing that keeping wireless numbers on the national list will burden high-volume callers who have already taken measures to eliminate wireless numbers from their marketing lists); DMA Reply at 9-10.

petitioners request that the Commission reconsider the extent to which states may apply their do-not-call requirements to interstate telemarketers.[20]

8. The Commission also received petitions asking whether certain entities or certain types of calls are subject to the national do-not-call rules. The National Association of Realtors (NAR) asks us to clarify that the do-not-call rules do not apply to certain practices that are "unique to the real estate industry."[21] Specifically, NAR argues that calls from real estate agents to individuals who have advertised their properties as "For Sale By Owner" fall outside the scope of the do-not-call rules.[22] In addition, NAR requests that the Commission clarify that the rules permit real estate professionals to call individuals whose listing with another agent has lapsed.[23] Independent Insurance Agents ask the Commission to reconsider our determinations that insurance agents are subject to the TCPA and that there should be no exemption for calls made based on referrals.[24] The State and Regional Newspaper Association asks the Commission to reconsider its treatment of newspapers under the do-not-call rules in view of the constitutional protection newspapers are accorded.[25]

9. As discussed below, we dismiss the foregoing petitions to the extent they seek reconsideration of the rules establishing the national do-not-call registry. Many of the same issues regarding the do-not-call registry were raised during the original proceeding and were addressed in the *2003 TPCA Order*.[26] In conjunction with the FTC, we will continue to monitor closely the operation of the list to ensure its continued effectiveness. We are not persuaded by the State & Regional Newspaper

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[20] DMA Petition at 2-5 (also arguing that the Commission should reconsider its standards governing the 18-month transition period for states to load their data into the national do-not-call list); ARDA Petition at 9-10 (asking the Commission to preempt state do-not-call rules that are more stringent than the federal rules); NAR Petition at 22 (arguing that preemption of less restrictive state telemarketing regulations governing intrastate calls exceeded the FCC's authority); State and Regional Newspapers Petition at 10-11; ATA Opposition at 2-4; ATA Reply at 1-3. *But see* Indiana AG Opposition at 2-5 (Commission has no authority to preempt state do-not-call laws; NASUCA Opposition at 3-4 (urging the Commission not to preempt state do-not-call rules); Verizon Reply at 1-3. We note that, since the close of the filing period for Petitions for Reconsideration, the Commission has received several petitions for declaratory ruling seeking preemption of state telemarketing laws. The Commission intends to address the issue of preemption separately in the future.

[21] NAR Petition at 16-19.

[22] NAR Petition at 17 (maintaining that because the property owners are acting as parties to a business transaction, such calls should be considered "business to business" calls); *see also* Trader Publishing Reply at 2-3 (arguing that when consumers advertise their telephone numbers in classified ads, they choose to limit their privacy out of a desire to sell a specific item). *But see* Brown Opposition at 6-7 (the disclosure of a residential telephone number for one purpose is not an invitation to receive even one call for a different purpose).

[23] NAR Petition at 18 (suggesting that such telephone calls, which offer a convenient way for individuals to switch to a new agent and sell their property, should also be exempt from the do-not-call rules).

[24] Independent Insurance Agents Petition at 3, 5.

[25] State and Regional Newspapers Petition at 1, 6-10; State and Regional Newspapers Reply at 3 (FCC must conduct a constitutional analysis under the First Amendment standards applicable to the distribution and circulation of publications). *But see* NASCUA Opposition at 4-8 (Commission has no statutory authority to create such an exemption).

[26] *2003 TCPA Order*, 18 FCC Rcd at 14028-42, paras. 16-41 (discussing the establishment and operation of a national do-not-call registry).

Association that we need to revisit our rules.[27] The State and Regional Newspaper Associations argue that the Commission cannot justify application of the new telemarketing rules under the "limited constitutional analysis" offered in the *2003 TCPA Order*. They argue instead that, pursuant to a line of judicial decisions involving licensing schemes for the distribution of newspapers, the Commission's rules must be justified under the standards "applicable to fully protected speech."[28]

10. In February 2004, the United States Court of Appeals for the 10th Circuit held that the Commission's "opt-in telemarketing regulation[s] that provide a mechanism for consumers to restrict commercial sales calls but do not provide a similar mechanism to limit charitable or political calls" are "consistent with First Amendment requirements."[29] Thus, our do-not-call rules are constitutional.

11. We recognize, however, that no party to that case specifically raised the issue of the standard of First Amendment protection afforded the distribution of newspapers before the court. After careful review of the State Newspaper Association's argument, however, we conclude that it is incorrect. To be sure, the right to distribute newspapers is afforded First Amendment protection. But a call from a telemarketer to an unwilling listener in their home for the purpose of selling a newspaper subscription remains speech which does "no more than propose a commercial transaction."[30]

12. Although the State Newspaper Association cites to a number of decisions noting that newspapers have been afforded First Amendment protection in the distribution of their newspapers, these cases typically deal with licensing cases that vest "unbridled discretion" in a government official over whether to permit or deny distribution of the publication at all.[31] By contrast, our rules simply permit a private individual, not a government official, to decide whether or not to entertain a subscription request in their home. Indeed, the Supreme Court upheld a statute that directed the Postmaster General to send an order directing a mail sender to delete the name of an addressee if that addressee requests the removal of his name from the sender's mailing list:

> The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property. In this case the mailer's right to communicate is circumscribed only by an affirmative act of the addressee giving notice that he wishes no further mailings from that mailer . . . In effect, Congress has erected a wall – or more accurately permits a citizen to erect a wall – that no advertiser may penetrate without his acquiescence.[32]

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[27] *See Mainstream Marketing Services, Inc. v. Federal Trade Comm'n*, 358 F.3d 1228 (10th Cir. 2004), *cert. denied*, 2004 WL 2050134 (U.S. Oct. 4, 2004) (No. 03-1552); *see also 2003 TCPA Order*, 18 FCC Rcd at 14052-59, paras. 63-73.

[28] State and Regional Newspaper Associations Petition for Reconsideration at 7-11.

[29] *Mainstream Marketing Services, Inc. v. Federal Trade Comm'n*, 358 F.3d 1228, 1232-1233 (10th Cir. 2004), *cert. denied*, 2004 WL 2050134 (U.S. Oct. 4, 2004) (No. 03-1552).

[30] *Board of Trustees of State University of N.Y. v. Fox,* 492 U.S. 469, 473-474 (1989).

[31] *See e.g.*, *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988); *Lovell v. City of Griffin,* 303 U.S. 444 (1938).

[32] *Rowan v. United States Post Office*, 397 U.S. 728, 737-739 (1970); *see also Federal Communications Comm'n v. Pacifica Foundation*, 438 U.S. 726, 748 (1978) ("[i]n the privacy of the home, . . . the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder."); *Martin v. City of Struthers*, 319 US 141 (1943) (in which the Court struck down a ban on door-to-door solicitation because it "substituted the judgment of the community for the judgment of the individual householder," *id.* at 144, but noted in *dicta* that a regulation

(continued....)

13. The do not call rules directly advance the government's substantial interests in guarding against fraudulent and abusive solicitations and facilitating the protection of consumer privacy in the home even when the product sought to be sold is a newspaper. We therefore reject the State Newspaper Association's constitutional arguments.

14. In addition, we disagree with the DMA that the rules should be revised to expressly exempt calls to business numbers.[33] The *2003 TCPA Order* provided that the national do-not-call registry applies to calls to "residential subscribers" and does not preclude calls to businesses.[34] To the extent that some business numbers have been inadvertently registered on the national registry, calls made to such numbers will not be considered violations of our rules. We also decline to exempt from the do-not-call rules those calls made to "home-based businesses"; rather, we will review such calls as they are brought to our attention to determine whether or not the call was made to a residential subscriber.

15. We also find no basis to further exempt certain entities or calls from the national do-not-call rules. The TCPA defines a telephone solicitation as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person but does not include a call or message to any person with that person's prior express invitation or permission; to any person with whom the caller has an established business relationship; or by a tax-exempt nonprofit organization."[35] As with any entity making calls that constitute "telephone solicitations," a real estate agent, insurance agent, or newspaper is precluded from calling consumers registered on the national do-not-call list, unless the calls would fall within one of the specific exemptions provided in the statute and rules.[36] Therefore, we clarify that a telephone solicitation would include calls by real estate agents to property owners for the purpose of offering their services to the owner, whether the property listing has lapsed or not.[37] We find, however, that calls by real estate agents who represent only the potential buyer to someone who has advertised their property for sale, do not constitute telephone solicitations, so long as the purpose of the call is to discuss a potential sale of the property to the represented buyer.[38] The callers, in such circumstances, are not encouraging the called party to purchase, rent or invest in property, as contemplated by the definition of "telephone

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"which would make it an offense for any person to ring a bell of a householder who has appropriately indicated that he is unwilling to be disturbed" would be constitutional. *Id* at 148.

[33] DMA Petition at 8-10 (noting its concern with calls to home numbers that are also used for business purposes); *see also* Independent Insurance Agents Petition at 6; NAR Petition at 16, n. 22; Brown Opposition at 4-5; Shields - DMA Opposition at 2.

[34] *2003 TCPA Order*, 18 FCC Rcd at 14039-40, para. 37. The rules also provide that "no person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section to…(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government." 47 C.F.R. § 64.1200(c).

[35] 47 U.S.C. § 227(a)(3).

[36] *See 2003 TCPA Order*, 18 FCC Rcd at 14042-49, paras. 42-54. *See also* NASUCA Opposition at 8-9.

[37] In addition, a person who, after seeing an advertisement in a newspaper, calls the advertiser to offer advertising space in the same or different publication, is making a telephone solicitation to that advertiser. *See* Trader Publishing Petition at 1-4.

[38] *See* NAR Petition at 17; *Ex Parte* Submissions, National Association of Realtors, filed October 21, 2004 and November 5, 2004 (suggesting that a call to a person who has entered the "for sale by owner" ("FSBO") market is a call to a business and thus is outside the scope of the TCPA).

solicitation."[39] They are instead calling in response to an offer to purchase something from the called party. In addition, as explained in the *2003 TCPA Order*, calls constituting telephone solicitations to persons based on referrals are nevertheless subject to the do-not-call rules, if not otherwise exempted.[40]

16. Finally, we deny Insurance Agents' petition to the extent it requests that we amend our safe harbor provision to account for "good faith calls" that violate the rules and to accommodate call back technologies that have the potential to run afoul of the rules.[41] We believe the existing safe harbor provision sufficiently addresses calls made in error by telemarketers that have made a good faith effort to comply with the rules.[42] Consistent with the FTC, we concluded that a seller or telemarketer will not be liable for violating the national do-not-call rules if it can demonstrate that it has met certain standards, including using a process to prevent telemarketing to any telephone number on the national do-not-call registry using a version of the registry obtained from the registry administrator no more than 31 days prior to the date any call is made.[43]

2. Common Carrier Notifications

17. The Commission's rules require that, beginning January 1, 2004, common carriers shall "when providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber."[44] This notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.[45] Verizon asks the Commission to reconsider this requirement, arguing that an annual notice is expensive and unnecessary.[46] Alternatively, Verizon asks the Commission to clarify that other forms of notification, such as messages on telephone bills or in telephone directories,

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[39] Similarly, a recruiter calling to discuss potential employment or service in the military with a consumer is not making a "telephone solicitation" to the extent the called party will not be asked during or after the call to purchase, rent or invest in property, goods or services. *See* Petition for Declaratory Ruling, filed by George Crosby, Vice President of Business Development for MedStaffing, Inc., December 16, 2003. A caller responding to a classified ad would not be making a telephone solicitation, provided the purpose of the call was to inquire about or offer to purchase the product or service advertised, rather than to encourage the advertiser to purchase, rent or invest in property, goods or services. *See also* Trader Publishing Reply at 2-3.

[40] *See 2003 TCPA Order*, 18 FCC Rcd at 14045-46, para. 48 (noting that such calls are more likely to be unexpected to the recipient).

[41] Independent Insurance Agents Petition at 6 (asking specifically that the Commission allow for a generous *de minimis* number of calls that accidentally violate the rules).

[42] *See* 47 C.F.R. § 64.1200(c)(2).

[43] *See* 47 C.F.R. § 64.1200(c)(2); *2003 TCPA Order*, 18 FCC Rcd at 14040, para. 38. The Commission recently revised the rules so that sellers or telemarketers must access the national do-not-call registry every thirty-one days in order to qualify for the safe harbor protections. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 04-204 (rel. Sept. 21, 2004).

[44] 47 C.F.R. § 64.1200(g)(1).

[45] 47 C.F.R. § 64.1200(g)(1).

[46] Verizon Petition at 1-2 (explaining that consumers are already well aware of the federal do-not-call program); Verizon Reply.

satisfy the TCPA requirement and at a much lower cost than bill inserts.[47]

18. The TCPA provides that if the Commission adopts a national do-not-call database, such regulations shall "require each common carrier providing telephone exchange service…to inform subscribers for telephone exchange service of the opportunity to provide notification…that such subscriber objects to receiving telephone solicitations."[48] In implementing this provision, the Commission adopted a rule requiring such notice to be made on an annual basis. While many residential subscribers have already placed their numbers on the national do-not-call registry, others may wish to do so in the future or may need to place a different number on the registry because of a move or change in service. Still others may decide subsequently to remove their numbers from the registry. Therefore, we disagree with Verizon that such annual notification, which includes the registry's toll-free telephone number and Internet address established by the FTC, is unnecessary.

19. Upon further consideration, we will allow common carriers to provide the notice required by 47 U.S.C. § 227(c)(3)(B) through either a bill insert or a separate message on the bill itself. Such notice may also appear on an Internet bill that the subscriber has opted to receive. We believe that bill messages may be a less expensive and an efficient alternative to a separate page in the bill for some carriers, and will nevertheless comply with the TCPA. We emphasize, however, that the notice, whether appearing on the actual bill or on a separate page in the bill, must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on or remove their numbers from the national database.[49]

B. Company-Specific Do-Not-Call Lists

20. In the *2003 TCPA Order*, the Commission determined that company-specific do-not-call lists should be retained in order to provide consumers with an additional option for managing telemarketing calls.[50] In addition, we concluded that the retention period for records of those consumers requesting not to be called should be reduced from ten years to five years.[51] Petitioner Biggerstaff seeks clarification on how the five-year retention requirement applies to do-not-call requests made prior to the effective date of the amended rule.[52] He argues that in fairness to consumers, any do-not-call request made prior to the effective date of the new rule must be honored by the telemarketer or seller for the original ten-year period.[53] SBC and MCI disagree and urge the Commission to clarify that telemarketers are required to honor company-specific do-not-call requests for five years from the date any request is made, including those requests made prior to the Commission's ruling.[54] Petitioner Brown asks the Commission to reduce the period of time by which a telemarketer must honor company-specific do-not-

[47] Verizon Petition at 3. *See also* Verizon Wireless Petition at 6 (asking the Commission to clarify that bill messages are "bill inserts" for purposes of compliance with the TCPA notice requirement); AT&T Wireless Reply (asking that carriers be allowed to use bill messages to notify consumers of the availability of the national do-not-call registry).

[48] 47 U.S.C. § 227(c)(3)(B).

[49] *See* 47 C.F.R. § 64.1200(g)(1).

[50] *2003 TCPA Order*, 18 FCC Rcd at 14067, para. 90.

[51] *2003 TCPA Order*, 18 FCC Rcd at 14068, para. 92.

[52] Biggerstaff Petition at 22-23; *see also* 47 C.F.R. § 64.1200(d)(6).

[53] In the alternative, Biggerstaff asks that prior requests should continue in force for their original ten-year period, or for five years from the effective date of the new rule, whichever comes first. *See* Biggerstaff Petition at 23.

[54] SBC Opposition at 3; MCI Opposition at 11-12.

call requests from 30 days to 24 hours.[55]

21. We conclude that any do-not-call request made of a particular company must be honored for a period of five years from the date the request is made, whether the request was made prior to the effective date of the amended rule or after the rule went into effect. Telemarketers may remove those numbers from their company-specific do-not-call lists that have been on their lists for a period of five years or longer. As explained in the *2003 TCPA Order*, we believe a five-year retention period reasonably balances any administrative burden on consumers in requesting not to be called with the interests of telemarketers in contacting consumers. The shorter retention period increases the accuracy of companies' do-not-call databases while the national do-not-call registry option mitigates the burden on those consumers who may find company-specific do-not-call requests overly burdensome. We also believe that having two different retention periods—one for requests made prior to the effective date of the amended rule and one for requests made after—will lead to confusion among consumers and increase administrative burdens on telemarketers.

22. In addition, we decline to amend the timeframe by which telemarketers must honor do-not-call requests. In concluding that telemarketers must honor such requests within 30 days, we considered both the large databases of such requests maintained by some entities and the limitations on certain small businesses.[56] We also determined that telemarketers with the capability to honor company-specific do-not-call requests in less than thirty days must do so.[57] We continue to believe that this requirement adequately balances the privacy interests of those consumers that have requested not to be called with the interests of the telemarketing industry.[58] We also decline to amend our determination regarding the hours a telemarketer must be available to record do-not-call requests from consumers making inbound calls to that telemarketer.[59] In the *2003 TCPA Order*, we concluded that the number supplied by the telemarketer must permit an individual to make a do-not-call request during the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.[60] Telemarketers are already required to record do-not-call requests at the time the request is made, such as during a live solicitation call.[61] Thus, we believe that in those instances where the consumer must instead contact the telemarketer at the telemarketer's number, it is reasonable to do so during "normal" business hours when most consumers are likely to call.[62]

23. Finally, the rules as adopted in July of 2003 contain a minor error in wording which is being corrected by this Order. In section 64.1200(d)(6), the word "caller's" should be replaced with the word "consumer's." We correct the sentence to read: "A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls."

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[55] Brown Petition at 4-6 (arguing that it should cost little and require little effort for telemarketers to immediately stop calling consumers who have made a do-not-call request). *But see* ATA Opposition at 7; MCI Opposition at 3-4.

[56] *2003 TCPA Order*, 18 FCC Rcd at 14069-70, para. 94.

[57] *2003 TCPA Order*, 18 FCC Rcd at 14069-70, para. 94.

[58] *See 2003 TCPA Order*, 18 FCC Rcd at 14069-70, para. 94.

[59] *See* Brown Petition at 6-8 (arguing that a telemarketer should be required to receive calls from consumers during the hours of 8 a.m. to 9 p.m. local time at the called party's location during any day on which the telemarketer called).

[60] *See 2003 TCPA Order*, 18 FCC Rcd at 14122, para. 180, n. 664.

[61] 47 C.F.R. § 64.1200(d)(3).

[62] *See* ATA Opposition at 8.

C. Established Business Relationship Exemption

24. The TCPA expressly exempts calls to persons with whom the caller has an "established business relationship" (EBR) from the restrictions on telephone solicitations. Congress determined that such an exemption was necessary to allow companies to communicate by telephone with their existing customers.[63] Consistent with the FTC, we modified the definition of established business relationship so that the relationship, once begun, exists for 18 months in the case of purchases or transactions and three months in the case of inquiries or applications, unless the consumer "terminates" it by, for example, making a company-specific do-not-call request.[64] ACLI asks the Commission to clarify that an "established business relationship" exists: (1) between a person and his or her insurer as long as there is an insurance policy or annuity in force between the company and the person; and (2) between the person and his or her insurance agent, as long as there is an insurance policy or annuity in force that was placed by that insurance agent.[65] ACLI indicates that the definition of "established business relationship" is vague as applied to the life insurance industry and does not take into account the unique aspects of the relationship between policyholders, insurers, their agents and licensed insurance professionals.[66] ACLI maintains that insurance policies and annuities purchased by consumers represent long-term obligations of the companies that provide those policies. ACLI indicates that an insurance policy or annuity remains in force between the parties beyond the initial policy placement or renewal. Thus, ACLI contends that an EBR exists during the life of the policy even without an additional purchase, transaction or inquiry by the policyholder.[67]

25. Petitioner Dowler similarly requests that the Commission clarify that an EBR exists between a mortgage broker and a consumer throughout the term of any loan that originates with the broker.[68] Without clarification from the Commission, Dowler contends that the mortgage broker's EBR with the consumer would end 18 months after the original transaction with the broker, even though the broker established the initial relationship with the consumer.[69] Dowler recommends that the Commission expand the rules so that an EBR exists between the broker and borrower during the length of the originating loan transaction and extends 18 months beyond the conclusion of the loan contract.[70]

26. Although petitions from ACLI and Dowler were filed late, we take this opportunity to clarify application of the EBR time limitations. We agree with petitioners that a unique relationship exists between consumers and entities that enter into financial contracts or agreements. Financial

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[63] *See* H.R. Rep. No. 102-317 at 13-14; *see also 2003 TCPA Order*, 18 FCC Rcd at 14078-79, para. 112.

[64] *2003 TCPA Order*, 18 FCC Rcd at 14078-80, para. 112-113.

[65] *See* ACLI Reply at 1-2; *see also* Dowler Late-Filed Petition at 1-2; Financial Services Coalition Petition at 9.

[66] ACLI Reply at 3.

[67] ACLI specifically uses the example of a "paid-up life insurance policy" (policies for which the policyholder has paid all requisite premiums and for which no additional payments are required) and single premium life insurance policies (policies for which the policyholder has paid all the required premiums in advance). In such instances, there may not be an additional purchase or transaction between the policyholder and the insurer or agent for several years. Nevertheless, according to ACLI, there are continuing contractual obligations under the life insurance policy or annuity.

[68] Dowler Late-Filed Petition at 1-2. According to Dowler, a mortgage loan is typically originated by the mortgage broker. The lender, in turn, collects the consumer's monthly payments, which form the basis of an ongoing EBR between the lender and consumer throughout the period of the lender's collection function.

[69] Dowler Late-Filed Petition at 2.

[70] Dowler Late-Filed Petition at 2.

"contracts" often remain in force even if the consumer is not required to make regular payments or transactions. In passing the recent Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Congress provided that a "pre-existing business relationship" includes a "financial contract between a person and a consumer which is in force" or a "financial transaction (including holding an active account or a policy in force or having another continuing relationship)."[71] We similarly clarify that the existence of financial agreements, including bank accounts, credit cards, loans, insurance policies and mortgages, constitute ongoing relationships that should permit a company to contact the consumer to, for example, notify them of changes in terms of a contract or offer new products and services that may benefit them. Consumers should not be surprised to receive a call from a bank at which they have an account, even if they have not transacted any business on that account for over 18 months. They also are likely to expect to receive calls from insurance companies with whom they hold an insurance policy or from lenders with whom they secured a mortgage. Similarly, a publication that a consumer agrees to subscribe to for a specified period of time, has an EBR with the consumer for the duration of the subscription.[72] Thus, during the time a financial contract remains in force between a company and a consumer, there exists an established business relationship, which will permit that company to call the consumer during the period of the "contract." Once any account is closed or any "contract" has terminated, the bank, lender, or other entity will have an additional 18 months from the last transaction to contact the consumer before the EBR is terminated for purposes of telemarketing calls.[73] However, we emphasize that a consumer may terminate the EBR for purposes of telemarketing calls at any time by making a do-not-call request. Once the consumer makes a company-specific do-not-call request, the company may not call the consumer again to make a telephone solicitation regardless of whether the consumer continues to do business with the company.[74]

27. In addition, we clarify that intermediaries, such as insurance agents and mortgage brokers, may call those consumers with whom they have arranged an insurance policy or mortgage for a period of 18 months from the time the transaction is completed, *i.e.,* the broker/agent arranged the mortgage or insurance deal.[75] We agree that brokers and agents often play an important role in these types of financial transactions and that, in many circumstances, the consumer would expect to receive a call from them within a reasonable period of time of the transaction.[76] However, we believe that to allow a broker to make a telephone solicitation to a consumer for the duration of the loan or term of the policy would conflict with the do-not-call rules' purpose in protecting consumer privacy rights.[77] In addition, a broker or agent may obtain the consumer's express written permission to call beyond the 18-month period

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[71] Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, sec. 214, § 624(d)(1), 117 Stat. 1952 (2003).

[72] *See* Newsletter & Electronics Publishers Petition at 5, n.7.

[73] 47 C.F.R. § 64.1200(f)(3).

[74] *See 2003 TCPA Order*, 18 FCC Rcd at 14086-87, para. 124.

[75] As explained above, if the consumer asks to be placed on the broker or agent's do-not-call list at any time, the broker or agent may not call the consumer again to make a telephone solicitation regardless of whether the consumer continues to do business with the broker and/or his company. *See supra* para. 26.

[76] *See* Dowler Late-Filed Petition at 1.

[77] *See* H.R. Rep. No. 102-317 at 14 (1991). Unlike the bank or lender with which a consumer has an ongoing relationship based on an account or loan, the mortgage broker or insurance agent typically is only involved in the original transaction. Thus, once the mortgage is secured or an insurance policy is set up, the broker or agent may only call the consumer during the 18-month period following the original transaction.

at the time of the transaction.[78]

D. Tax-Exempt Nonprofit Organization Exemption

28. The term "telephone solicitation," as defined in the TCPA, does not include a call or message "by a tax-exempt nonprofit organization."[79] The Commission concluded, as part of its *1995 TCPA Reconsideration Order*, that calls placed by an agent of the telemarketer are treated as if the telemarketer itself placed the call.[80] In the *2003 TCPA Order*, the Commission reaffirmed this conclusion, finding that charitable and other nonprofit entities with limited expertise, resources and infrastructure, might find it advantageous to contract out its fundraising efforts.[81] We determined that a tax-exempt nonprofit organization that conducts its own fundraising campaign or hires a professional fundraiser to do it, will not be subject to the restrictions on telephone solicitations.[82] We also determined, however, that when a for-profit organization is delivering its own commercial message as part of a telemarketing campaign, even if accompanied by a donation to a charitable organization or referral to a tax-exempt nonprofit organization, that call is not by or on behalf of a tax-exempt nonprofit organization and is therefore subject to the "telephone solicitation" rules.[83]

29. Several petitioners ask the Commission to reconsider the rules regarding calls by and on behalf of tax-exempt nonprofit organizations.[84] DialAmerica requests that we clarify that its "Sponsor Program" is exempt from the national do-not-call registry because the calls it makes are on behalf of a tax-exempt nonprofit entity, and not on behalf of a for-profit seller.[85] Petitioner Biggerstaff, on the other hand, asks us to reconsider our determination regarding calls made *by or on behalf of* tax-exempt nonprofit organizations, arguing that exempting calls from the definition of "telephone solicitation," when they are made by a for-profit telemarketer on behalf of the nonprofit, violates Congressional intent and the plain language of the statute.[86]

30. We now reaffirm our determination regarding for-profit companies that call to encourage

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[78] *See* 47 C.F.R. § 64.1200(c)(2)(ii).

[79] 47 U.S.C. § 227(a)(3).

[80] *1995 TCPA Reconsideration Order*, 10 FCC Rcd at 12397, para. 13.

[81] *See 2003 TCPA Order*, 18 FCC Rcd at 14089-90, para. 128.

[82] *See 2003 TCPA Order*, 18 FCC Rcd at 14089-90, para. 128.

[83] *See 2003 TCPA Order*, 18 FCC Rcd at 14089-90, para. 128; *see also* 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(9).

[84] *See* DialAmerica Petition; Biggerstaff Petition at 18-19; Strang Petition at 3 (asking the Commission to amend 47 C.F.R. § 64.1200(a)(2)(v) to read, "Is made by or on behalf of a tax-exempt nonprofit organization, provided that the call does not contain, or introduce an unsolicited advertisement or telephone solicitation.").

[85] DialAmerica explains that through its Sponsor Program, DialAmerica contracts with magazine publishers to offer magazine subscriptions at heavily discounted rates, creating a catalog of over 400 magazines for sale. It then works with a specific charity to conduct outreach and fundraising. DialAmerica makes telephone calls to consumers, during which they describe the particular charity, and ask consumers to subscribe to a magazine of their choice. Consumers are told that 12 ½ percent of each sale will go to the charity. If a consumer buys a magazine subscription, the charity receives 12 ½ percent of the subscription price. From the discounted subscription price, DialAmerica pays the magazine publisher an agreed upon amount. DialAmerica retains a portion of the subscription price to cover its costs. *See* DialAmerica Supplemental Petition at 4-5.

[86] *See* Biggerstaff Petition at 19-21; *see also* Brown Opposition at 4.

the purchase of goods or services, yet donate some of the proceeds to a nonprofit organization. In circumstances where telephone calls are initiated by a for-profit entity to offer its own, or another for-profit entity's products for sale—even if a tax-exempt nonprofit will receive a portion of the sale's proceeds—such calls are telephone solicitations as defined by the TCPA. We distinguish these types of calls from those initiated, directed and controlled by a tax-exempt nonprofit for its own fundraising purposes. We believe that to exempt for-profit organizations merely because a tax-exempt nonprofit organization is involved in the telemarketing program would undermine the purpose of the do-not-call registry. Thus, we decline to exempt DialAmerica's Sponsor Program from the national do-not-call registry.

31. We emphasize that a tax-exempt nonprofit organization that simply contracts out its fundraising efforts will not be subject to the restrictions on telephone solicitations.[87] Although Petitioner Biggerstaff describes certain entities that purport to be calling on behalf of tax-exempt nonprofits to evade the rules, the record does not warrant reversing this determination. Instead, we will address such potential violations on a case-by-case basis through the Commission's enforcement process.

E. Predictive Dialers and Abandoned Calls

32. Under the Commission's rules, telemarketers must ensure that any technology used to dial telephone numbers abandons no more than three percent of calls answered by a person, measured over a 30-day period.[88] A call will be considered abandoned if it is not transferred to a live sales agent within two seconds of the recipient's completed greeting. When a call is abandoned within the three percent maximum allowed, a telemarketer must deliver a prerecorded identification message containing only the telemarketer's name, telephone number, and notification that the call is for "telemarketing purposes."[89] Several petitioners and commenters raise issues related to the use of predictive dialers and the Commission's call abandonment rules.[90] InfoCision requests that the Commission reconsider the call abandonment rate of three percent and instead adopt a five percent abandonment rate.[91] Petitioner Brown asks us to revise the rules to prohibit the abandonment of *any* call which is answered by a person.[92] Beautyrock urges the Commission to act to ensure that the FTC's rules on abandoned calls are consistent

[87] We note that under the FTC's rules, a nonprofit organization that hires a for-profit telemarketer to make calls on its behalf must comply with the FTC's company-specific do-not-call rules. *See Telemarketing Sales Rule, Final Rule,* Federal Trade Commission, 68 Fed. Reg. 4580 at 4582, 4589 (January 29, 2003).

[88] 47 C.F.R. § 64.1200(a)(6)

[89] 47 C.F.R. § 64.1200(a)(6).

[90] *See* Beautyrock Petition (asking the Commission to file with Congress a reconsideration request for the FTC to modify its rules to match the FCC's so that telemarketers who call only existing customers are not subject to the call abandonment provisions); Brown Petition at 13-21; DMA Petition; InfoCision Petition; RDI Late-Filed Petition; Shields Petition; Voice-Mail Petition; ATA Opposition and Reply (seeking clarification that calls using predictive dialers, along with live operators, are not prohibited when made to wireless numbers).

[91] InfoCision Petition at 2 (arguing that the Commission did not adequately consider the devastating economic effect caused to businesses by the abandonment provision); RDI Late-Filed Petition at 1-2.

[92] Brown Petition at 13-20 (Brown argues that there is no evidence that consumers desire to receive or that they benefit in any way from abandoned calls. Brown also maintains that a telemarketer cannot know whether its call was answered live by a person or by an answering machine or voicemail, or know when the called person has completed her greeting unless a live sales representative is connected to and can hear the called person); Brown Opposition at 2. *But see* ATA Opposition at 9-11 (indicating that predictive dialing equipment can determine whether a call is answered by a live person or answering machine and can calculate the abandonment rate accordingly); Voice-Mail Opposition at 4; Interactive Agent Reply at 2.

with the FCC's.[93]

33. We conclude that petitioners raise no new facts suggesting the call abandonment rules should be amended or that the identification message requirement should be eliminated. We therefore dismiss such petitions to the extent they seek such action. In addition, while we do not have the authority to change the FTC's rules, we have forwarded a report to Congress which outlines the inconsistencies between the agencies' sets of rules.[94]

34. The record before us revealed that consumers often face "dead air" calls and repeated hang-ups resulting from the use of predictive dialers.[95] In addition to requiring that telemarketers limit the number of such abandoned calls to three percent of calls answered by a person, the Commission required that telemarketers deliver a prerecorded message when abandoning a call so that consumers will know who is calling them. We emphasized that the message must be limited to name and telephone number, along with a notice that the call is for "telemarketing purposes." We cautioned that the message may not be used to deliver an unsolicited advertisement, and that additional information in the prerecorded message constituting an unsolicited advertisement would be a violation of our rules.[96] We agree with the DMA that words other than "telemarketing purposes" may convey the purpose of the call.[97] However, we disagree that language such as "Hi, this is Company A, calling today to sell you our services" does not constitute an unsolicited advertisement and conclude that such statement would run afoul of the rules. Therefore, we strongly encourage telemarketers to use the words "telemarketing purposes" when delivering a prerecorded identification message for an abandoned call in order to avoid delivering an unsolicited advertisement in the message.

F. Artificial or Prerecorded Voice Messages

35. The TCPA prohibits telephone calls to residences using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is for emergency purposes or is specifically exempted under Commission rules.[98] The TCPA permits the Commission to exempt calls that are non-commercial and commercial calls which do not adversely affect the privacy rights of the called party and which do not transmit an unsolicited advertisement.[99] Since 1992, the Commission's rules have exempted from the prohibition "a call or message…that is made for a commercial purpose but does not include the transmission of any unsolicited advertisement."[100] The Commission made clear in the *2003 TCPA Order* that offers for free goods or services that are part of an

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[93] Beautyrock Petition at 1-2; *see also* Interactive Agent Reply (supporting the Commission's call abandonment rules and urging the FCC to coordinate with the FTC so that the agencies' rules are consistent).

[94] *See Rules and Regulations Implementing the Telephone Consumer Protection Act,* Report on Regulatory Coordination, 18 FCC Rcd 18558 (2003). The FTC recently released an NPRM seeking comment on whether to amend its rules to allow the use of prerecorded messages in telemarketing calls to consumers with whom the seller has an established business relationship and whether to permit telemarketers to measure their abandoned calls on a monthly basis, rather than on a per day, per campaign basis. *See Federal Trade Commission, Telemarketing Sales Rule*, Notice of Proposed Rulemaking, 69 Fed. Reg. 67287 (November 17, 2004).

[95] *2003 TCPA Order*, 18 FCC Rcd at 14101-2, 14108, paras. 146 and 155.

[96] *2003 TCPA Order*, 18 FCC Rcd at 14108, para. 155.

[97] DMA Petition at 16-17.

[98] 47 U.S.C. § 227(b)(1)(B).

[99] 47 U.S.C. § 227(b)(2)(B).

[100] 47 C.F.R. § 64.1200(c)(1).

overall marketing campaign to sell property, goods, or services are subject to the restrictions on unsolicited advertisements.[101] We also determined that if the call is intended to offer property, goods, or services for sale either during the call, or in the future (such as in response to a message that provides a toll-free number), that call is an advertisement.[102]

1. Debt Collection Calls

36. The Commission's rules require that all prerecorded messages identify the name of the business, individual or other entity that is responsible for initiating the call, along with the telephone number of such business, other entity, or individual.[103] The prerecorded message must contain, at a minimum, the legal name under which the business, individual or entity calling is registered to operate. The rule also requires that the telephone number stated in the message be one that a consumer can use during normal business hours to ask not to be called again. ACA International (ACA) requests clarification that the amended identification requirements for prerecorded messages do not apply to calls made for debt collection purposes.[104] ACA states that the Commission's identification requirement as applied to debt collection calls directly conflicts with section 805(b) of the Fair Debt Collection Practices Act (FDCPA),[105] which prohibits the disclosure of the existence of a debt to persons other than the debtor. ACA maintains that the FDCPA expressly prohibits debt collectors from communicating any information to third parties, even inadvertently, with respect to the existence of a debt.[106] ACA states that the requirement that a debt collector transmit its registered name at the beginning of the prerecorded message potentially would trigger liability under the third party disclosure prohibition of the FDCPA.[107] In the alternative, ACA requests that the Commission clarify that debt collectors are not required to identify their state-registered name in prerecorded messages if such identification conflicts with federal or state laws.[108]

37. In the *1995 TCPA Reconsideration Order*, the Commission concluded that the rules did not require that debt collection employees give the names of their employers in a prerecorded message, which disclosure might otherwise reveal the purpose of the call to persons other than the debtor.[109] Although we believe that it is generally in the best interest of residential subscribers that full identification

[101] *2003 TCPA Order*, 18 FCC Rcd at 14097-98, para. 140.

[102] *2003 TCPA Order*, 18 FCC Rcd at 14098-99, para. 142.

[103] 47 C.F.R. § 64.1200(b).

[104] ACA Petition at 1. *See also* SoundBite Reply at 8-9 (seeking clarification that debt collection calls are exempt from the prerecorded message delivery restrictions, including the identification requirements).

[105] 15 U.S.C. § 1692c(b).

[106] 15 U.S.C. § 1692c(b) provides that, "[w]ithout the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector." The term "communication" is defined broadly under the FDCPA, and includes the "conveying of information regarding a debt directly or indirectly to any person through any medium," including over the telephone. 15 U.S.C. § 1692a(2).

[107] ACA members have state-registered names including words that relate to their business, such as "ABC Collections, Inc." or "ABC Recovery, Inc." *See* ACA Petition at 7.

[108] ACA Petition at 8; SoundBite Reply at 8-9 (supporting ACA's Petition).

[109] *1995 TCPA Reconsideration Order*, 10 FCC Rcd at 12401, para. 19.

of the caller be provided during any prerecorded message call, the FDCPA clearly prohibits the disclosure by debt collectors of any information regarding the existence of a debt. It requires a collector initiating a call answered by a third party to identify himself by name but not to disclose the name of his employer unless asked.[110] We therefore clarify that as long as the call is made for the purpose of debt collection and is not "for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services…," the debt collector is not required to identify its state-registered name in prerecorded messages if such identification conflicts with federal or state laws.[111] In such circumstances where a conflict would exist, we find that the caller may instead identify himself by individual name. We continue to require any debt collector to state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual.[112]

2. "Information-Only" Calls

38. The American Resort Development Association (ARDA) asks the Commission to permit entities to make prerecorded, "information-only" calls to numbers that are not on the national do-not-call list or a company-specific do-not-call list.[113] ARDA explains that timeshare providers use such messages to describe promotional opportunities, but that consumers are not encouraged to purchase anything on the phone. If the consumer returns the call to learn more, the operator informs the consumer about promotional activities at a nearby resort. ARDA contends that prohibiting such prerecorded message calls is not necessary to safeguard consumers' privacy or prevent unscrupulous conduct.[114] ARDA further argues that the Commission's determination regarding such messages violates the First Amendment rights of consumers who wish to receive such calls.[115] Shields opposes ARDA's petition, maintaining that a

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[110] 15 U.S.C. § 1629b(1).

[111] This is consistent with the FTC's view that debt collection calls are not covered by the FTC's Telemarketing Sales Rule (TSR) because they are not "telemarketing" calls. The FTC notes, however, that if the debt collection call also included an upsell, the upsell portion of the call would be subject to the TSR as long as it met the criteria for "telemarketing" and was not otherwise exempt from the [TSR]. *See* Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4664, n.1020 (January 29, 2003) (final amended rule). We similarly conclude that, to the extent that debt collection calls contain neither telephone solicitations nor unsolicited advertisements, the calls would not be subject to certain requirements of 47 C.F.R. § 64.1200(b), as explained above. A debt collector that offers a debtor a means of payment during a collection call would not be making a telephone solicitation or unsolicited advertisement.

[112] Assuming the debt collection call does not include a telephone solicitation as defined in the TCPA, the caller is not required to honor do-not-call requests under the Commission's company-specific do-not-call rules. Thus, the telephone number provided need not permit one to make a do-not-call request during regular business hours. *See* 47 C.F.R. § 64.1200(b).

[113] ARDA Petition at 1. In the alternative, ARDA asks the Commission to "extend the radio and tv broadcast exemption to the resort timeshare industry." ARDA Petition at 18-20. *See also* DMA Petition at 12 (supporting a narrow exception for prerecorded messages where the message is only left on an answering machine, provided the marketer calls only consumers who are not on the do-not-call registry, has a live operator available to speak with a consumer within two seconds, and leaves a recorded message on an answering machine if a consumer does not answer the call).

[114] ARDA Petition at 2, 6 (maintaining that prerecorded calls are less intrusive and may be favored because such calls use call abandonment technology and cannot deviate from a script or mislead the consumer as could a live call).

[115] ARDA Petition at 9-18 (also arguing that the FCC's rules conflict with the FTC's rules). We note that although ARDA cites an FTC provision suggesting that such calls are permissible under the FTC's rules, the FTC's call abandonment rules would likely prohibit such messages.

prerecorded call, the ultimate purpose of which is to further a commercial enterprise, is a telemarketing call.[116]

39. We decline to grant ARDA's petition to exempt prerecorded messages regarding timeshare opportunities. The messages ARDA describes that purport to deliver "information only" are clearly part of a marketing campaign to encourage consumers to invest in a commercial product. As we stated in the *2003 TCPA Order*, the fact that a sale is not completed during the call or message does not mean the message does not constitute a telephone solicitation or unsolicited advertisement.[117] Messages that describe a new product, a vacation destination, or a company that will be in "your area" to perform home repairs nevertheless are part of an effort to sell goods and services, even if a sale is not made during the call.[118] In addition, as discussed above, messages that promote goods or services at no cost are nevertheless unsolicited advertisements because they describe the "quality of any property, goods or services."[119] ARDA points out that consumers who receive prerecorded messages must return the calls if they wish to learn more, to complete the sale, or simply to ask to be placed on a do-not-call list. As noted in the *2003 TCPA Order*, such messages were determined by Congress to be more intrusive to consumer privacy than live solicitation calls.[120] The record before us shows that consumers are, in fact, often more frustrated by prerecorded messages.[121] The DMA indicates that they should be used only in limited circumstances, as consumers are often offended by such messages.[122] Thus, we reiterate that prerecorded messages that contain either a telephone solicitation or introduce an unsolicited advertisement are prohibited without the prior express consent of the called party.

40. We disagree with Petitioner Strang that entities sending lawful prerecorded messages must obtain the "prior express consent" of the called party in writing.[123] Unlike the national do-not-call registry, through which consumers have indicated that they do not wish to receive telemarketing calls (by registering on the list), we find no evidence in the record suggesting that consent should be in writing when sending prerecorded messages to consumers not registered on the national do-not-call list.[124] In the case of the national do-not-call registry, we concluded that sellers may contact those consumers on the list if they have obtained the prior express permission of the consumers. Such express permission must be evidenced only by a signed, written agreement between the consumer and the seller.[125] Absent a consumer's listing on the do-not-call registry, such prior express consent to deliver a lawful prerecorded message may be obtained orally.[126] As with the sending of unsolicited facsimile advertisements,

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[116] Shields Opposition at 4; *see also* Brown Opposition at 5-6; ARDA Reply at 3-8; Shields Reply at 1.

[117] *2003 TCPA Order*, 18 FCC Rcd at 14097-98, para. 140.

[118] *See 2003 TCPA Order*, 18 FCC Rcd at 14097-98, para. 140, n.477.

[119] 47 C.F.R. § 64.1200(f)(10); *see supra* para. 37.

[120] *See TCPA*, Section 2(10) and (12), *reprinted in* 7 FCC Rcd at 2744-45.

[121] *See 2003 TCPA Order*, 18 FCC Rcd at 14096, para. 137.

[122] *See* DMA Petition at 21.

[123] Strang Petition at 1. Strang also argues that the Commission should reconsider the exemption for prerecorded messages sent to consumers with whom the caller has an established business relationship. Strang Petition at 2-3.

[124] *See 2003 TCPA Order*, 18 FCC Rcd at 14043-44, para. 44, n.157; *see also* H.R. Rep. No. 102-317 at 13 (1991) (suggesting that Congress did not believe such prior express permission need be in writing in the context of telephone solicitations).

[125] *2003 TCPA Order*, 18 FCC Rcd at 14043-44, para. 44.

[126] 47 C.F.R. § 64.1200(a)(2) prohibits initiating any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call: (i) is

(continued....)

telemarketers delivering prerecorded messages must be prepared to provide clear and convincing evidence that they received prior express consent from the called party.

41. We also decline to reconsider the requirement for businesses to use their legal name to identify themselves when they use prerecorded messages.[127] We believe that the use of "d/b/as" ("doing business as") alone in many instances may make it difficult to identify the company calling. However, as we stated in the *2003 TCPA Order*, the rule does not prohibit the use of "d/b/a" information, provided that the legal name of the business is also provided.[128]

3. Radio Station and Television Broadcaster Messages

42. In the *2003 TCPA Order*, we addressed prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or similar opportunity.[129] We concluded that if the purpose of the message is merely to invite a consumer to listen to or view a broadcast, such message is permitted under the rules as a commercial call that "does not include or introduce an unsolicited advertisement or constitute a telephone solicitation."[130] We also noted, however, that if the message encourages consumers to listen to or watch programming that is retransmitted broadcast programming for which consumers must pay (*e.g.,* cable, digital satellite, etc.), such messages would be considered "unsolicited advertisements" for purposes of our rules.[131] Such messages would be part of an overall marketing campaign to encourage the purchase of goods or services or that describe the commercial availability or quality or any goods or services and would be considered "unsolicited advertisements" as defined by the TCPA.

43. Petitioner Biggerstaff requests that the Commission reconsider its determination that certain radio and television broadcast messages are not considered "unsolicited advertisements" under the restrictions on prerecorded messages.[132] Biggerstaff contends specifically that radio and television broadcasts are entertainment and news "services," as well as "advertisement delivery services." Biggerstaff further maintains that there is no basis for treating such broadcasters differently from others providing similar services, such as cable networks, web sites, newspapers or publishers.[133]

(...continued from previous page)
made for emergency purposes, (ii) is not made for a commercial purpose, (iii) is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation, (iv) is made to any person with whom the caller has an established business relationship at the time the call is made, or (v) is made by or on behalf of a tax-exempt nonprofit organization. *See also* 47 U.S.C. § 227(b)(1)(B).

[127] Verizon Wireless Petition at 4-5 (indicating that given the complex and often shared ownership structure in the wireless industry, this requirement will create customer confusion); *see also* AT&T Wireless Reply at 2-3. *But see* Brown Opposition at 7 (arguing that in many cases, only by knowing the legal name of the telemarketer can a consumer obtain enough information to make an actionable complaint to the Commission or take other legal action against the caller).

[128] *See 2003 TCPA Order*, 18 FCC Rcd at 14099-100, para. 144.

[129] *See 2003 TCPA Order*, 18 FCC Rcd at 14100-01, para. 145.

[130] *2003 TCPA Order*, 18 FCC Rcd at 14100-01, para. 145.

[131] *2003 TCPA Order*, 18 FCC Rcd at 14100-01, para. 145, n.499.

[132] Biggerstaff Petition at 1-13; Biggerstaff Reply at 1 (noting the numerous comments filed in opposition to radio and television broadcast messages).

[133] Biggerstaff Petition at 7-8.

44. We decline to reverse our conclusion regarding radio station and television broadcaster messages. As explained in the *2003 TCPA Order*, if the purpose of the message is merely to invite a consumer to listen to or view a broadcast, such message is permitted under the current rules as "a commercial call that does not include or introduce an unsolicited advertisement or constitute a telephone solicitation."[134]

G. Wireless Telephone Numbers

45. In the *2003 TCPA Order,* we affirmed that it is unlawful to make any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number.[135] We stated that both the statute and our rules prohibit these calls, with limited exceptions, "to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged."[136] In addition, we determined not to prohibit all live solicitations to wireless numbers, but noted that the TCPA already prohibits such calls to wireless numbers using an autodialer.[137]

46. As noted above, section 227(b)(1)(A)(iii) of the TCPA refers to calls made to any telephone number "assigned to" cellular telephone service or any service for which the called party is charged for the call.[138] Verizon Wireless explains that according to numbering guidelines and the Commission's rules, numbers ported to another carrier are treated as "assigned numbers" that are then reported to the Commission for utilization purposes by the donating carrier, not by the receiving carrier.[139] According to Verizon Wireless, a number that is ported to another carrier is still assigned to the original carrier for purposes of numbering and local number portability. Verizon Wireless asks us to clarify that, under the TCPA, the number is "assigned to" a wireless service based on the identity of a customer's new service, rather than the identity of the original carrier.[140]

47. We agree with those petitioners who point out that permitting autodialed and prerecorded voice messages to wireless telephone numbers that have been ported from wireline carriers would defeat the underlying purpose of the prohibition—to protect wireless subscribers from the cost and interference associated with such calls.[141] To apply the Commission's definition of "assigned numbers" for number utilization purposes to the TCPA's rules on calls to wireless numbers would lead to an unintended

[134] 47 C.F.R. § 64.1200(a)(2)(iii).

[135] *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

[136] *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

[137] Thus, calls that are dialed manually and connect to live operators could be placed to wireless numbers. *2003 TCPA Order*, 18 FCC Rcd at 14116, para. 166. *But see* ATA Opposition at 4-6 (arguing that the Commission should clarify that it did not intend to cut off calls to wireless phones that are placed by predictive dialers but connect to live operators).

[138] 47 U.S.C. § 227(b)(1)(A)(iii).

[139] Verizon Wireless Petition at 3 (*citing Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7585-86, para. 18 (2000)).

[140] Verizon Wireless Petition at 2-4; *see also* AT&T Wireless Reply at 1-2. *But see* MCI Opposition at 8-10 (arguing that numbers ported from a wireline carrier to a wireless carrier remain "assigned" to the wireline carrier).

[141] Verizon Wireless Petition at 3-4.

result.[142] Telemarketers would be prohibited from placing autodialed and prerecorded message calls to wireless numbers generally, but permitted to place such calls to certain subscribers simply because they have ported their numbers from wireline service to wireless service. In addition, we believe we made clear in the *2003 TCPA Order* that, even with the advent of local number portability, we expect telemarketers to make use of the tools available in the marketplace to avoid making autodialed and prerecorded message calls to wireless numbers.[143] Thus, we affirm that a telephone number is assigned to a cellular telephone service, for purposes of the TCPA, if the number is currently being used in connection with that service.

48. We also agree with the DMA that a call placed to a wireline number that is then forwarded, at the subscriber's sole discretion and request, to a wireless number or service, does not violate the ban on autodialed and prerecorded message calls to wireless numbers.[144] Action on the part of any residential subscriber to forward certain calls from their wireline device to their wireless telephones does not subject telemarketers to liability under the TCPA.

H. Caller Identification Rules

49. The DMA asks the Commission to further examine and perhaps revise our caller identification (caller ID) requirements, indicating that it is not clear that Automatic Number Identification (ANI)[145] will pass to ordinary residential subscriber lines.[146] Brown petitions the Commission to require telemarketers, when transmitting caller ID, to provide a telephone number, which the consumer may call at no toll charge.[147]

50. We decline to reconsider the caller ID requirements and dismiss both the DMA's and Brown's petitions. We continue to believe that the caller ID rules allow consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again. In addition, as discussed in the *2003 TCPA Order*, we believe that telemarketers can comply with the requirements. Under the rules, telemarketers are required to transmit caller ID information, which must include either ANI or Calling Party Number (CPN).[148] We explained that CPN can include any number associated with the telemarketer or party on whose behalf the call is made, that allows the consumer to identify the caller.[149] This includes a number assigned to the telemarketer by its carrier, the specific number from which a sales

[142] *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) (concluding that numbers ported for the purpose of transferring an established customer's service to another carrier should be categorized as "assigned numbers").

[143] *2003 TCPA Order*, 18 FCC Rcd at 14117, para. 170; *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 19 FCC Rcd 19215 (2004).

[144] *See* DMA Reply at 10.

[145] The term "ANI" refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery to end users. *See* 47 C.F.R. § 64.1600(b).

[146] DMA Petition at 20.

[147] Brown Petition at 21; *see also* MCI Opposition at 6 (the FCC's decision not to require telemarketers to provide a toll-free number as part of their Caller ID information was reasonable).

[148] "Calling Party Number" (CPN) refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network. See 47 C.F.R. § 64.1600(c).

[149] *2003 TCPA Order*, 18 FCC Rcd at 14122, para. 180.

representative placed a call, the number for the party on whose behalf the telemarketer is making the call, or the seller's customer service number. Any number supplied must permit an individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.[150]

I. Private Right of Action

51. The TCPA provides consumers with a private right of action in state court for any violation of the TCPA's prohibitions on the use of automatic dialing systems, artificial or prerecorded voice messages, and unsolicited facsimile advertisements.[151] Several petitioners request that the Commission clarify the parameters of the private right of action.[152]

52. The Commission declines to make any determination about the specific contours of the TCPA's private right of action. Congress provided consumers with a private right of action, "if otherwise permitted by the laws or rules of court of a State." As we stated in the *2003 TCPA Order*, this language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those state courts' rules.[153] We continue to believe that it is for Congress, not the Commission, either to clarify or limit this right of action.

IV. PROCEDURAL ISSUES

A. Regulatory Flexibility Act Analysis

53. We note that no FRFA is necessary for the Second Order on Reconsideration. In this Order, we are not making any changes to the Commission's rules; rather, we are clarifying the existing rules. In addition, there were no objections to the FRFA regarding the Commission's telemarketing rules.

B. Paperwork Reduction Act

54. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

C. Materials in Accessible Formats

55. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This *Order* can also be downloaded in

[150] *2003 TCPA Order*, 18 FCC Rcd at 14122, para. 180.

[151] 47 U.S.C. § 227(b)(3).

[152] *See* Dietetic Association Petition at 7 (asking that we clarify that a person who requests a fax of specific material cannot assert a violation of the rule when the sender complies with the request); Financial Services Coalition Petition at 13 (arguing that recipients of unwanted faxes should have an obligation to notify the sender within a prescribed amount of time that the fax is unsolicited); Biggerstaff Petition at 21-22 (seeking determinations that a plaintiff is entitled to an award of attorneys fees for damages from a common carrier for violations of the TCPA and that the general federal question statute of limitations applies to civil TCPA actions). *But see* MCI Opposition at 13-14 (arguing that Biggerstaff's requests are beyond the scope of this proceeding).

[153] *See 2003 TCPA Order*, 18 FCC Rcd at 14136, para. 206.

Word and Portable Document Format (PDF) at http://www.fcc.gov/cgb/policy/telemarketing.html.

D. Congressional Review Act

56. The Commission will send a copy of this *Second Order on Reconsideration* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, and 303(r); and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, this *Second Order on Reconsideration* in CG Docket No. 02-278 IS ADOPTED as set forth herein, and Part 64 of the Commission's rules, 47 C.F.R. § 64.1200 is amended as set forth in Appendix A.

58. IT IS FURTHER ORDERED, that the requirements of this *Second Order on Reconsideration* shall become effective 30 days after publication of a summary thereof in the Federal Register.

59. IT IS FURTHER ORDERED, that the petitions for reconsideration and/or clarification of the telemarketing rules in CG Docket No. 02-278 are DENIED in part and GRANTED in part, as set forth herein.[154]

60. IT IS FURTHER ORDERED, that MedStaffing Inc.'s Petition for Declaratory Ruling is GRANTED to the extent stated herein.

61. IT IS FURTHER ORDERED, that petitions not filed within 30 days of the Report and Order's publication by American Council of Life Insurers, Consumer Bankers Association, Clifford Dowler, and RDI Marketing are DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[154] As noted above, the Commission intends to address the issue of preemption separately in the future.

Appendix A

Rule Changes

Part 64 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (C), Public Law 104-104, 110 Stat.

56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

2. Section 64.1200 is amended by revising paragraph (d)(6) to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

* * * * *

Appendix B

Petitions Filed

Below are listed only those petitions for reconsideration and/or clarification addressed in this Second Order on Reconsideration.

Petitioner	Short name
ACA International (8/25/03)	ACA
American Dietetic Association (8/6/03) (8/25/03)	Dietetic Association
American Resort Development Association (8/25/03)	ARDA
Beautyrock, Inc. and JHA Telemanagement, Inc. (filed as Jon Hamilton) (8/18/03)	Beautyrock
Biggerstaff, Robert (8/22/03)	Biggerstaff
Brautigam, Jr., Lawrence C. (8/25/03)	Brautigam
Brown, Dennis C. (8/18/03)	Brown
Byer, Jon Keith (8/1/03)	Byer
Consumer Bankers Association (8/26/03 – LATE FILED)	Consumer Bankers
Direct Marketing Association (8/25/03)	DMA
Dowler, Clifford (10/14/03 – LATE FILED)	Dowler
Independent Insurance Agents and Brokers of America (8/25/03)	Independent Insurance Agents
InfoCision Management Corporation (filed as Steve Brubaker) (8/25/03)	InfoCision
National Association of Realtors (8/25/03)	NAR
Office of Advocacy, U.S. Small Business Administration (8/25/03)	Office of Advocacy
RDI Marketing Services, Inc. (filed as Roger W. Healey) (9/10/03 – LATE FILED)	RDI
State & Regional Newspaper Associations (8/25/03)	State & Regional Newspapers
Trader Publishing Company (filed as Trade Publishing Company) (8/25/03)	Trader Publishing
Verizon (8/25/03)	Verizon
Verizon Wireless (8/25/03)	Verizon Wireless

Oppositions Filed

Opponent	Short name
American Teleservices Association (10/14/03)	ATA
Brown, Dennis (10/14/03)	Brown
Indiana Attorney General Steve Carter (10/8/03)	Indiana AG
National Association of State Utility Consumer Advocates (10/14/03) (filed as NASUCA)	NASUCA
Oney, Walter (9/23/03)	Oney
SBC Communications, Inc. (10/14/03)	SBC
Shields, Joe (DMA, 9/2/03) (ARDA, 9/2/03), (DMA 9/4/03)	Shields
Strang, Wayne G. (10/20/03)	Strang
Voice-Mail Broadcasting Corporation (10/14/03)	Voice-Mail
Worldcom, Inc. d/b/a MCI (10/14/03)	MCI

Replies to Oppositions Filed

American Council of Life Insurers and the National Association Of Insurance and Financial Advisors (12/9/03 – LATE FILED)	ACLI
American Teleservices Association (11/3/03)	ATA
American Resort Development Association (11/3/03)	ARDA
America's Community Bankers (11/3/03) (filed as America Community Bankers)	Community Bankers
AT&T Wireless Services, Inc. (11/3/03)	AT&T Wireless
Biggerstaff, Robert (10/31/03)	Biggerstaff
Direct Marketing Association (11/3/03)	DMA
Interactive Agent Association (11/3/03)	Interactive Agent
Office of Advocacy, U.S. Small Business Administration (10/30/03)	Office of Advocacy
Shields, Joe (10/30/03)	Shields
SoundBite Communications, Inc. (11/3/03)	SoundBite
State & Regional Newspaper Associations (11/3/03)	State & Regional Newspaper
Strang, Wayne (10/20/03)	Strang
Trader Publishing Company (11/3/03)	Trader Publishing
Verizon (11/3/03)	Verizon

CONSOLIDATED STATEMENT OF
CHAIRMAN MICHAEL K. POWELL

RE: *In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligation on All Local and Interexchange Carriers*, CG Docket No. 02-386.

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

RE: *Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53.

The three items the Commission adopts today continue our efforts to place consumers at the forefront of the Commission's agenda. Specifically, we take action to strengthen the Commission's telemarketing rules, which were amended in 2003. This continues the work begun in 2003 with the establishment of a national do-not-call registry and other consumer protection measures concerning telemarketing calls. The do-not-call registry now contains over 80 million telephone numbers and continues to serve as an option to protect consumers from unwanted telemarketing calls.

Moreover, the rules we adopt today help to ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. Facilitating the exchange of customer account information in certain situations will assist all carriers in resolving billing issues and moving customers seamlessly from one carrier to another. I am pleased that the Commission has endorsed a proposal that has garnered the support of a broad cross-section of the industry. These standards will create greater industry uniformity without imposing unnecessary burdens on carriers.

Finally, we revise the Commission's policies governing charges associated with a consumer's choice to change long distance providers. The current $5 safe harbor rate was implemented in 1984, and industry and market conditions have changed dramatically since that time. Moreover, the record in this proceeding clearly demonstrates a large disparity between the costs of PIC change charges that are processed electronically versus those that are processed manually. As a result, based on cost data filed in the record, we set a separate safe harbor rate for electronically and manually processed PIC changes -- $ 1.25 and $5.50, respectively. Carriers that have invested in the technology to process and submit PIC changes electronically should be rewarded by offering potential customers a lower PIC change rate reflecting the lower costs of electronic processing. Adopting a two-tiered approach provides an incentive for providers offering long distance service to invest in electronic processing capabilities to gain the competitive advantage of lower PIC change charges for customers switching to these services.

I am pleased to support these three interrelated items. They represent the Commissions commitment to protecting individuals throughout the life-cycle of consumer choice – from the decision to change providers, to the costs associated with that choice, to a decision to prevent unwanted telemarketing calls.