Below are my comments on the CAN-SPAM NPRM contained in the Federal Register Vol. 70, No. 91 (CAN-SPAM Act Rulemaking, Project No. R411008). I have previously spoken in front of the commission on anti-spam and e-mail authentication issues, as part of my role at my previous place of employment. No longer being affiliated with that company, these comments come from me personally. A.1. I believe that an exclusion to compliance necessity for a "forward to a friend" feature (even absent of inducement) would be counter to Congress's intent to protect the consumer from unwanted commercial e-mail. If a Sender is initiating an e-mail message to someone who has previously opted out of commercial communication from that Sender, even if it simply on behalf of a "friend", it will be viewed by the recipient as a violation, and will cause needless confusion. I say "needless" because there are simple, technical solutions to this issue that Senders or web sites can employ. For example, HTML provides a simple method of achieving the same result with the actual "friend" being the one technically and apparently sending the message. Clicking on a link can cause the invocation of a user's e-mail program, with the subject often filled in, and a link to the web page of interest in the body of the message. The user simply has to type the name of their "friend" in the "To" field of their own e-mail software. It is important to note that the the main difference between doing this and what is proposed is that the friend's e-mail address never passes through the Sender's network, which to me is the preferred state of affairs unless we feel that the web site reader can make a final decision on whether or not their friend wants their information shared with the Sender. I feel that this confusion could result in excess cost to The Commission in enforcement investigation from these messages that are meant to be initiated from a friend, but may be apparently initiated by a Sender. B.1.c. Whether or not Opt-out obligations should be extended to third-party list providers is a question that goes to the root of the intent CAN-SPAM. It is clear that the intent of Congress was to impose this act largely upon Senders and to some extent Initiators. A list provider clearly has no material role as an actor in this process. It is clear to me that the intent of Congress was to hold the Sender or advertiser accountable for ensuring that recipients are protected. I interpret their intent as one to hold the ultimate beneficiary of the commercial e-mail message (the advertiser) accountable, because they would be most incentivized to do so, as they are the ones who stand to lose or gain the most. I believe the Commission answered its own question by asking "..how could this be accomplished, given the statutory language which defines "sender"..." I believe that any interpretation that would cause an extension to a list provider would be counter to Congress's intent, and would place a heavy burden on enforcement and compliance. B.1.f. I believe that CAN-SPAM should only apply to online groups when the message is initiated outside of the group. In most instances when this occurs, it is against the wishes of the group, and even the list owner, and might be considered an aggravated violation. Outside of that, it would place too heavy a burden on list owners (often private individuals) to maintain a database of who should receive specific portions of their normal message or message digest. B.2.a. I believe that an e-mail message containing only a legally mandated notice should have no standing in CAN-SPAM at all, other than perhaps a routine conveyance. It is not a commercial e-mail message, and is not a transactional or relationship message. B.2.b. Debt collection e-mails sent directly from the entity with whom the consumer conducted business should be considered transactional. Debt collection e-mails sent from a third party should be considered

commercial. To extend the transactional relationship to third party debt collectors would grant unusual power to debt collectors that I am not convinced would be used in a righteous manner, and would cause an enforcement burden on The Commission and perhaps even involve other entities of government. B.2.d. A transaction should be considered commercial for the purposes of determining "transactional or relationship" status, even if consideration is not necessarily involved. There are many online businesses that utilize the model of "trial memberships" or other situations where consideration is not paid until a later time, and a determination as to whether consideration will ever be traded may not be determined until a later time. It would therefore be impossible to use this information which has not yet be determined, and The Commission should err on the side of protection to the consumer. B.2.e. If a message "purports" to be from a third party acting on behalf of a company with a relationship with the recipient should be far less important than if they actually are acting on that behalf! Assuming they actually are, I believe that extending the exclusion to them would cause a burden on enforcement and confusion to recipients. B.2.f. A message meant to effectuate or complete a negotiation should be considered transactional if and only if the recipient has a reasonable expectation that such a negotiation will occur via e-mail. B.2.g. I believe that commercial messages to employees of a given employer that come from third parties should not be considered transactional or relationship messages, and should be considered commercial under CAN-SPAM. I believe that messages directly from employers to employees, even if they contain commercial elements, should be protected by law that supersedes CAN-SPAM, and are neither commercial nor transactional under this statute. B.2.j. Nowhere in CAN-SPAM has Congress required enforcement to be based on the content of the initial request of the recipient. I believe they were correct in specifically disregarding the initial "opt-in", due to reasons of enforcement and the undue burden on proof of compliance it would require. If there were some way to assure that such a transaction existed in the way it is described in this hypothetical scenario, the extension of transactional or relationship message might be a good idea, but I feel strongly that such assurances would be impossible. Unlike sales receipts from physical places of business and written contracts, the opt-in process is not captured in a way that can be produced reliably enough to allow for this.