BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

In the Matter of	)	
	)	
Telemarketing Rulemaking - Comment	)	FTC File No. R411001
	)	
	)	

SUPPLEMENTAL COMMENTS OF SBC COMMUNICATIONS INC.

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June 28, 2002

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I. INTRODUCTION

1. SBC Communications Inc. ("SBC") hereby submits its supplemental comments in response to the Federal Trade Commission's ("Commission" or "FTC") *Notice of Proposed Rulemaking* ("NPRM")[1] in which the Commission proposes, among other things, extensive changes to the Telemarketing Sales Rule ("TSR"), including creation of a national "do not call" ("DNC") list and extending the TSR to business-to-business telemarketing of Internet and web services. SBC previously filed comments[2] in response to the FTC's NPRM and participated in the FTC's *Forum on Proposed Changes to the Telemarketing Sales Rule* ("Forum"), held in Washington, D.C., on June 5-7, 2002.[3] SBC will confine its supplemental comments to issues raised during the FTC's Telemarketing Sales Rule Forum.

2. SBC also includes, as an attachment to these supplemental comments, its brief comments on the Commission's *Notice of Proposed Rulemaking – Telemarketing Sales Rule User Fees* ("User Fee NPRM"),[4] also filed today.

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[1] Telemarketing Sales Rule; Proposed Rule, 67 Fed. Reg. 4492 (January 30, 2002) ("Proposed Rule" or "NPRM").

[2] *In the Matter of Telemarketing Rulemaking – Comment,* Comments of SBC Communications Inc., FTC File No. 411001 (April 18, 2002).

[3] SBC was represented at the Forum by Mr. Jeffrey Scruggs, Executive Director, SBC Technology Resources, Inc.; Mr. Sid Underwood, Director o f Product Design, SBC Management Services, Inc.; and Mr. Stuart Kivowitz, Director of Public Policy and External Affairs, SBC Directory Operations.

[4] 67 Fed. Reg. 37362 (May 29, 2002).

3. In its previous comments, SBC urged the Commission to reconsider the proposed amendments to the TSR because:

- The Commission lacks jurisdiction over common carriers, their affiliates and agents and cannot extend the TSR to SBC non-common carrier affiliates or agents without disrupting competitive balances that Congress and the Federal Communications Commission ("FCC") have carefully constructed;

- The proposed DNC list will compound administrative burdens without substantially adding to consumers' existing powers to avoid unwanted telemarketing calls;

- The Commission may have materially underestimated the significant expense and technological challenges inherent in administering the DNC list; and

- The proposed extension of the TSR to business-to-business telemarketing of Internet and web services will significantly encumber legitimate online service providers and delay small business' adoption of valuable online tools without substantially increasing their protection from fraud.

4. In its supplemental comments in response to the Forum, SBC suggests that if the FTC implements a DNC list:

- the Commission should acknowledge that common carriers, their affiliates and agents are exempt;

- The Commission should adopt a viable existing business relationship exemption; and

- The national DNC registry should adopt certain features of the Texas state DNC program.

5. SBC also expands on its testimony at the Forum in order to suggest to the Commission certain legal, technical and practical issues to be considered in implementing a DNC list. SBC offers these suggestions based on the significance of the issues raised during this proceeding and SBC's experience in the telecommunications industry. In these comments, SBC clarifies that:

- The technical capabilities and limitations of Automatic Number Identification ("ANI") and Caller ID services may impair the Commission's ability to rely on these items to achieve the agency's objectives;

- Many telecommunications networks lack the capacity universally to provide caller identification information to individuals;

- Statutory, technical and practical barriers will complicate efforts to use information regarding disconnected phone numbers to update the DNC list, and, in addition, new mover lists and line number portability do not provide disconnect data; and

- The relationship between telephone common carriers and their affiliates is pervasively regulated by the FCC and state regulatory commissions, and the FTC does not have jurisdiction over common carriers, their affiliates or agents.

II. IF THE COMMISSION IMPLEMENTS A DNC LIST, IT SHOULD ACKNOWLEDGE THE COMMON CARRIER EXEMPTION, INCLUDE A VIABLE EXEMPTION FOR EXISTING BUSINESS RELATIONSHIPS AND ADOPT CERTAIN ASPECTS OF THE TEXAS DNC PROGRAM.

6. As SBC discusses below in section V, the Commission lacks jurisdiction over common carriers, their affiliates and agents. Should the Commission adopt a DNC list, it should acknowledge this exemption in order to promote regulatory certainty.

7. SBC urges the Commission to adopt an exemption that will allow telemarketers to contact registrants on the national DNC list with whom they have an existing business relationship. The majority of states with DNC lists include an exemption for existing business relationships, which were not identified as problematic during the Forum. SBC supports an exemption that would allow a business to call an individual, despite his or her registry on the national DNC list, if he or she voluntarily initiated a purchase, inquiry, transaction or application with the telemarketing business or its affiliate, with or without consideration, during the prior three years.

8. SBC suggests that any DNC list implemented by the Commission adopt certain aspects of the Texas DNC program. Under the Texas "no-call lists" statute, the state public utilities commission collects the name, address and telephone number of registering consumers and charges them a fee.[5] An entry on the Texas DNC list expires after three years, but can also be deleted by request from the consumer. Businesses may call individuals appearing on the Texas DNC list if they had a business relationship with that person anytime in the prior year.

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[5] *See* Tex. Bus. & Com. Code Section 43.101 (2002).

9. In its implementation of any DNC list, the Commission should also make it as easy for an individual to remove his or her name from the registry as to subscribe to the registry. The Commission's goals of promoting consumer choice over the telemarketing they receive are consistent with an easy removal process.

III. THE TECHNICAL CAPABILITIES OF "ANI" AND "CALLER ID" IN CONVEYING INFORMATION RELEVANT TO THE TSR

10. SBC sought to address some misconceptions about certain technical features of the nation's telecommunications network via its participation in the Forum. As this Commission is aware, the FCC regulates these technologies as part of its plenary jurisdiction over the nation's telecommunications systems and carriers.

11. SBC respectfully submits these supplemental comments to clarify certain issues that apparently remain confused after the Forum. In particular, SBC wishes to supplement the record by providing a more thorough description of the capabilities of ANI and Caller ID features.

A. Automatic Numbering Information: What It Can And Cannot Do

1. What ANI Is

12. In the United States telephone network, ANI identifies the calling party's billing number (but not name).[6] That number is "often, but not always," the telephone number associated with the particular telephone device (referred to in the telecommunications industry as the "station") from which the caller places a call.[7] For a single-line residential customer, the ANI number will generally be the station number.[8] However, for calls generated through a private branch exchange ("PBX," such as in some apartment buildings, assisted-living facilities, retirement homes, university dormitories, or other

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[6] In technical terms, ANI uses multifrequency in-band signaling to transmit the billing telephone number associated with the calling party. ANI was developed in the pre-Signaling System 7 environment, but is still generated and transmitted by the nation's telephone networks.

[7] *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, 10 FCC Rcd 11700, 11707 (1995) (Memorandum Opinion and Order on Reconsideration) ("*Caller ID Order on Reconsideration*").

[8] *Id*. at 11707, nt. 14.

"campus-like" settings, as well as some businesses), ANI would most likely be the number associated with the billing account, which would differ from the station number. Unlike Caller Party Number ("CPN"), addressed below, ANI cannot be blocked by the calling party.[9]

13. When a calling party places a long distance call, the calling party's local exchange telephone carrier ("LEC," such as SBC's wholly owned subsidiary Southwestern Bell Telephone, BellSouth, or Verizon) originates a call and delivers ANI to the long distance carrier (such as AT&T, WorldCom, and Sprint) that carries the long distance call. This enables the long distance carriers to bill for carrying the call.

14. Ordinarily, the long distance carrier does not deliver ANI to the LEC that terminates the call and connects to the party receiving the call. This is because the purpose of ANI is to facilitate billing, and there generally is no need to transmit billing data to the called party or to the called party's LEC. The principal exception is in some "toll free" or 800 and 877 service offerings, where the called party pays for this toll free service. Long distance carriers may deliver ANI to business who subscribe to "toll free" services and are the called party because those businesses perceive value in identifying their customers. For any DNC database to receive ANI, it must subscribe to an 800-type service and contract to receive ANI.

2. ANI Does Not Verify The Identity of the Calling Party

15. Because ANI identifies the billing number associated with the station, which is not necessarily the particular station number used by the caller, ANI is not necessarily capable of verifying the identity of the person placing the call, or verifying that the person placing the call is the owner of the line. As this Commission has previously recognized, without further authenticating evidence such as a PIN number or some other

[9] *Id.* at 11707. This is because ANI is conveyed within the "multifrequency" signal that also conveys the voice communication, unlike CPN, which is an "out-of-band" signal that can be blocked by the customer without affecting the voice communication itself.

identifier, the use of ANI does not suffice to ensure "whether or not a caller is authorized by the subscriber to place such calls."[10]

3. Other Limitations of ANI

16. Other limitations of ANI may bear on the Commission's actions in this proceeding. First, if the Commission were to allow third-party registration of DNC numbers, the third party registering the numbers would not have the technical ability to convey ANI to the DNC registry. Thus, additional measures would need to be taken to register a number in a DNC database. In this instance, the system would be more complex than the simple, automated system that the Commission apparently envisions.

17. Second, ANI technology is a feature of the current circuit-switched based telecommunications network that is being replaced by other technologies. Voice-over-packet-switching now being developed and deployed (*e.g.*, Voice over Internet Protocol telephony) does not generate ANI. Nor is ANI generated by cable-based telephony. Therefore, the Commission should recognize that as individuals continue to migrate to packed-switched and cable-based telecommunications services, these individuals will not reliably generate any ANI that can be conveyed automatically to the DNC registry. Any DNC database must be able to accommodate the technological diversity that could become ubiquitous within the next 3-5 years, the Commission's stated trial period for the current DNC proposal.

4. FCC Regulations Restrict the Use of ANI

18. The TSR Forum considered whether the proposed DNC database could be used for other, possibly undesirable, purposes. The FTC must recognize that common carriers have specific obligations to consumers under FCC regulations with respect to ANI. FCC regulations require common carriers that provide ANI to limit the uses to which the recipients may use the information. In particular, persons to whom ANI is provided may not reuse or resell the information without obtaining the specific consent of the telephone

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[10] Comments of the Federal Trade Commission, CC Docket No. 96-146, at 6-7 (FCC Pay-Per-Call Proceeding) (filed Aug. 26, 1996).

subscriber to such reuse or sale.[11] Nor, without the specific consent of the subscriber, may the recipient of ANI use the ANI for any purpose other than performing the service or transaction that was the purpose of the call or to ensure network security.[12] Consistent with the FCC regulation, if the FTC uses an ANI databases, it must prohibit its use in accordance with FCC restrictions.

B. Caller ID

19. The FTC's DNC forum contained considerable discussion of Caller ID services. Significant technical obstacles inherent in today's telecommunications networks make it impossible to guarantee that Caller ID information will be delivered to individuals. It is also important to recognize that the FCC, in a series of decisions since the mid-1990s, has exercised its regulatory jurisdiction in this area and, in some instances, preempted conflicting state regulations. Indeed, not only has the FCC adopted specific regulations affecting Caller ID services, but also the FCC in fact has prohibited mandatory unblocking in the interest of protecting the privacy of *calling* parties. Finally, the Commission should also be aware that even if the Calling Party Number (or CPN) is successfully transmitted to the called party, the delivery of "Calling Party Name" does not necessarily occur.

1. Conditions Necessary for Caller ID to Work.

20. Under certain circumstances, Caller ID "identifies the calling party's telephone number to the called party" where the called party has subscribed to Caller ID service from his or her LEC.[13] This service works by transmitting to the called party's Caller ID receiver certain data called CPN, "the subscriber line number or the directory number."[14] For CPN to be delivered to a called party, several conditions must be satisfied:

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11 47 C.F.R. § 64.1602(a)(2).

12 47 C.F.R. § 64.1602(a)(3).

13 *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, 9 FCC Rcd 1764, 1764 nt.3 (1994) (Report and Order and Further Notice of Proposed Rulemaking)("*Caller ID Report and Order*").

14 *Id.* at 1765 nt. 5.

- First, the calling party's originating local exchange telephone company must have installed the Caller ID feature software in its local switching system and Common Channel Signaling System 7 ("SS7").[15] SS7 signaling technology enables telephone networks equipped with appropriate switching software to provide a variety of features, including Caller ID and Automatic Call Back.

- Second, *each* telecommunications service provider handling a call to its termination point must have an SS7 capable network.[16] If a single provider lacks SS7 capability, CPN information associated with a call is simply lost.

- Third, the calling party must not have blocked the delivery of its CPN; and

- Fourth, the receiving party must have a device capable of "reading" the CPN information transmitted via SS7. This can be a separate Caller ID "box" or, in some telephone handsets, the capability is built into the phone.[17]

21. No telemarketer can *guarantee* that CPN will be presented to the called party, as the availability of CPN depends on specific technological features of the telecommunications networks through which a call is switched.

22. Not all calls generate proper Caller ID signals for identifying the call originating station. Conventional, dial-up residential circuits will generate the proper Caller ID information because these circuits are for a single line or telephone number. Higher-speed ISDN Primary Rate Interface ("PRI") multi-circuit connections can generate proper Caller ID signals associated with the originating station because the PRI uses SS7 type signaling. In contrast, other connections, such as T-1 trunks used to connect PBXs to the

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[15] SS7 uses "out-of-band signaling," by which "a packet network transmits signaling information on circuits separate from the circuits used to connect the calling and called parties." *Caller ID Order on Reconsideration*, 10 FCC Rcd at 11704. An SS7 message is organized into a format developed by the telecommunications industry that consists of defined parameter fields and subfields. The "out-of-bound" nature of SS7 improves the efficiency of the network by enabling carriers to set up and release calls more quickly.

[16] As noted at the Forum, today the largest telephone companies (including SBC, Verizon, BellSouth, and Qwest) and the larger long distance companies (AT&T, WorldCom, Sprint) are all SS7-enabled. However, there are approximately 2000 providers of local exchange services in the United States, many serving small or rural areas, hundreds of long distance companies, and hundreds of competitive local exchange carriers, many of which are not SS7-enabled.

[17] These devices are classified by the FCC as "customer premises equipment" and are not regulated, other than to ensure that they do not cause technical harm to the nation's telecommunications network.

Public Switched Telephone Network ("PSTN"), do not generate proper SS7 Caller ID signals and cannot identify individual call originating stations. PBX's are owned and operated by private businesses, not LECs, and are frequently used by telemarketers. Where a PBX is connected by a T-1 instead of a PRI, the LEC will transmit the "billing telephone number" for the PBX as "pseudo CPN" because the LEC is unable to identify the individual call originating station within the PBX. For T-1 trunks associated with PBXs to produce CPN, private owners of PBXs must make extensive modifications of their equipment to create SS7-capable ISDN PRI circuits. In addition, even if modifications were made to create SS7 functionality, telemarketers' PBXs may be unable to transmit CPN unless the LEC switch to which the PBX connects has software capable of reading and forwarding CPN. Conceivably, a telemarketer could attempt to block CPN deliberately by avoiding SS7 capable networks. But it is also possible that the LEC is not capable of identifying the originating station within the PBX because of the T-1 connection limitations of the telemarketer's PBX.

23. Even if a network is capable of passing CPN for Caller ID purposes, federal regulation may nonetheless require a LEC to block CPN. The FCC requires any PBX that is capable of sending CPN, as opposed to an administrative or other number that is not the actual calling party's number, to have the capability to allow the caller to block CPN.[18] This requirement does not, of course, apply to PBXs that do not pass CPN. The FCC has also extended this requirement to telephone company Centrex services, which compete with PBXs in providing switching systems to organizations.

24. Blocking of CPN is achieved through the use of a privacy parameter in SS7 technology. This "privacy indicator bit" is delivered along with the CPN and instructs the common carriers involved in setting up the call that the calling party has chosen to block CPN from being delivered to the called party. The terminating carrier may receive the CPN, but does not disclose it to the called party. As noted, FCC regulations prohibit carriers from supplying CPN when the customer (calling party) has blocked it.

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[18] *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, 12 FCC Rcd 3867, 38883 (1997) (Third Report and Order)("*Caller ID Third Report and Order*").

25. During the TSR Forum, a speaker described an arrangement through which, he claimed, CPN was transmitted on a station-by-station basis even though his company used a PBX and T-1 trunking. He asserted that it was a service that AT&T, his local and long distance provider, made available. SBC respectfully believes that the businessman who made that remark did not accurately describe his company's telecommunications configuration (there was quite a bit of debate and confusion among the panelists at the Forum as to how calls were placed, answered and then transferred to his call center stations). SBC believes that in the gentleman's situation AT&T is acting as his company's competitive local exchange carrier and is using an AT&T switch set up to handle local calls. AT&T apparently associates a telephone number with the trunk through which the PBX connects to the PSTN. SBC provides such services as well; however, the number associated is the billing number for the T-1, not the actual calling station.

2. Caller ID and Privacy

26. In the NPRM, the agency focuses on the privacy rights of called parties, but since the introduction of Caller ID services in the early 1990s, equally serious concerns have been raised about the privacy of *calling* parties. Consequently, common carriers face FCC and state regulations that require them not to override blocked Caller ID information.[19]

27. When the FCC first considered the interstate transmission of Caller ID in 1994, that agency sought to balance the "privacy interest of the called party against the privacy interest of the caller and proposed that interstate Caller ID should include some measures to protect calling parties' privacy."[20] The FCC rejected the contention of some privacy advocates that Caller ID violated "privacy rights protected by the U.S. Constitution."[21] However, recognizing that "there may be occasions when the calling party does not wish

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[19] *See, e.g.,* Final Opinion on Pacific Bell's Marketing Practices and Strategies, *Utility Consumers' Action Network v. Pacific Bell*, Decision 01-09-058 (Public Utilities Commission of the State of California, September 20, 2001) (ordering Pacific Bell to inform customers adequately of their of their rights under California law to block their Caller ID information and prevent caller numbers from being displayed on a caller ID device).

[20] *Caller ID Report and Order,* 9 FCC Rcd at 1768.

[21] *Id.* at 1769.

to have the CPN revealed to the called party," the FCC concluded: "carriers should provide callers the option of withholding their number from called parties on a per call basis."[22] The FCC also stated that callers may choose to install devices that screen all originating interstate calls, such as by automatically inserting a blocking prefix on each call going out over a particular line.[23]

28. In fact, the FCC went so far as to *prohibit* common carriers from "modifying or overriding the privacy indicator on an interstate call."[24] FCC regulations state: "No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call." FCC regulations also forbid a carrier from using blocked CPN to allow the called party to contact the calling party – "Automatic Call Return."[25] This determination reflected the FCC's judgment that the calling party has a legitimate interest in privacy that outweighs the general usefulness of Caller ID service. Many states also have imposed similar policies and regulations in the balance of the privacy of the calling party and the called party.

3. Calling Party Name

29. Although Calling Party Name appears to the called party in a very similar manner as CPN, it is delivered in a different, more complex, manner. Calling Party Name is not delivered by the SS7 network along with the CPN, but requires additional connections between carriers (including interexchange communications) and database capabilities.

30. In particular, to deliver Calling Party Name the *terminating* LEC must contact the originating LEC and "query" a database maintained by the originating LEC to match the calling party's name with the CPN. The databases where Calling Party Name

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22 *Id.* at 1772.

23 *Id.*

24 64 C.F.R. § 64.1601(b). *See also Caller ID Report and Order*, 9 FCC Rcd at 1767. FCC regulations state: "No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call."

25 64 C.F.R. § 64.1601(b).

information is stored is known as the Line Information Database or "LIDB."[26] While linking a name with a phone number is generally easy in the placement of local calls (where the originating and terminating LEC are the same), associating CPN with Calling Party Name for long distance calls involves an information exchange between originating and terminating LECs, which can be problematic. Access to LIDB databases is determined by contract. If no such LIDB information sharing agreement exists between the originating and terminating LECs, the calling party number may not be displayed, but not Calling Party Name. Furthermore, many LECs do not have a LIDB database or do not keep the information in the database current.

31. The FCC's Caller ID regulations apply in similar fashion to Calling Party Name. In particular, FCC regulations prohibit a carrier from disclosing the name of a calling party when the calling party has blocked CPN.[27] In addition, the FCC requires carriers to honor requests by calling parties to block automatic call return.[28]

4. What The Called Party Sees

32. These technological and regulatory factors determine whether Caller ID information is sent to a called party and what the party will actually see on a Caller ID receiver. These factors are summarized in the following table:

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[26] A LIDB is a large, standalone intelligent network database containing information about the LEC's subscribers, and is connected to and accessed by the local carrier's switching systems via SS7. LIDBs contain "information as to whether a subscriber number is a valid working line, telephone line type, call screening information and validation information for calling cards." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15729A (1996) (First Report and Order).

[27] 47 C.F.R. § 64.1601(b); see also *Caller ID Order on Reconsideration* at ¶ 6.

[28] *Caller ID Order on Reconsideration*, 10 FCC Rcd at 11747.

	Calling Party Number	Calling Party Name
Number Shown **Name Shown**	CPN delivered by SS7-enabled carriers throughout transmission; no CPN blocking	LIDB contract between carriers
Number Shown **Name Unknown**	CPN delivered by SS7-enabled carriers throughout transmission; no CPN blocking	No LIDB contract between carriers
Number Unknown/Out of Region **Name Unknown**	CPN not received; either non-SS7 enabled carrier involved or Caller has blocked CPN	No CPN to use to query originating carrier's LIBD database
Blocked Number (or "Private Number") **Name Unknown**	SS7-enabled carriers throughout transmission; Caller has blocked CPN	FCC forbids provision of Name even if carriers are formed LIDB contract
Trunk Number Shown **Name of Company Not Shown**	SS7-enabled carriers throughout transmission deliver telephone number associated with PBX trunk, not individual caller	No LIDB contract between carriers
Trunk Number Shown **Name of Company Shown**	CPN delivered by SS7-enabled carriers throughout transmission; the delivered telephone number is associated with PBX trunk, not the individual caller	LIDB contract between carriers

IV. STATUTORY, TECHNICAL AND PRACTICAL BARRIERS WOULD COMPLICATE EFFORTS TO USE DISCONNECTED PHONE NUMBER INFORMATION TO UPDATE A DNC LIST

33. As SBC and others have observed in this proceeding, approximately 20% of phone numbers assigned to customers in the United States change hands every year.[29] To avoid

[29] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd. 8752, 8759 (1992) (Report and Order).

rapid obsolescence, any DNC list must be frequently updated or registrations must expire after a defined period of time – such as six months. Indeed, to keep a national DNC list up-to-date, the Commission must be prepared to accept a frequent data stream of disconnected phone numbers from every LEC and other kinds of carriers and service providers in the country.

34. At the Forum, some suggested that a national DNC list could be updated by deleting numbers on lists of disconnected phone numbers. To SBC's knowledge, only one state (Colorado) currently requires LECs to provide a list of changed or disconnected numbers to the administrator of a state-run DNC list, and LECs are required to do so only on a quarterly basis. While SBC has no information regarding how successful the Colorado program will be, this Commission must consider certain legal, technical and practical issues before attempting to institute such a proposal on a national basis. SBC is not aware of any entity that currently collects comprehensive, national disconnect information, let alone an entity that collects such information with the frequency needed for purposes of keeping a DNC list up-to-date.

35. The telephone numbering system in the United States is subject to the jurisdiction of the FCC. In a series of decisions, the FCC has developed policies regarding the administration of what is called the North American Numbering Plan.[30] One aspect of that plan is that the responsibility for assigning telephone numbers among subscribers is in the hands of numerous providers of local and wireless services (such as SBC's subsidiary phone companies and its wireless affiliate, Cingular), not a central administrator.[31] As subscribers terminate service, those carriers maintain lists of disconnected numbers for reassignment to their customers.

36. Beyond these carrier-specific blocks of phone numbers, most LECs (such as SBC, Verizon, BellSouth, and Qwest) maintain Line Information Databases ("LIDBs"), and a

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[30] *See, e.g., Telephone Number Portability*, 11 FCC Rcd 8352 (1996) (First Report and Order and Further Notice of Proposed Rulemaking).

[31] Neustar, the private-sector administrator of the North American Numbering Plan, does not collect disconnect information and is not presently equipped to provide disconnect database services. Rather, Neustar oversees the assignment of number blocks to LECs and plans for area code relief. The FCC regulates Neustar's activities at the federal level.

few other regional LIDBs exist as well. These databases provide information regarding most active numbers (lines in service); disconnected numbers do not appear in the LIDB databases. As discussed above, access to LIDB databases is governed by contract, not all LECs maintain a LIDB database, and not all LIDB databases are kept current.

37. Not only are disconnect lists in scattered locations, but the FTC would have no legal basis for requiring LECs and other providers to submit lists of disconnected numbers to a national DNC database administrator. Because the FTC has no jurisdiction over common carriers, it cannot compel LECs to assemble and disclose information about disconnected phone numbers. In addition, no federal law and only one state law now require LECs to disclose disconnect information.[32]

38. Accordingly, if the Commission were to keep the DNC list current by obtaining disconnect information, the database administrator would have to purchase this information. The cost of negotiating with each provider to obtain disconnect lists as well as the cost of the access itself could substantially increase the cost of the DNC registry. These costs could rise even further if LECs need to create new, reliable and secure systems to reformat data in order to produce data streams in the FTC's preferred format.[33] Finally, LECs would be free to decline the Commission's offers, in which case the DNC list could not be wholly updated.

39. Moreover, contracting with LIDBs for access to disconnect information may not provide a straightforward solution for the Commission. For the majority of smaller LECs, LIDBs maintain up-to-date customer databases, which are accessed by third-party LECs when completing calls or delivering services to a LEC's customers. Nonetheless, LIDBs may not be authorized in contracts with LECs to disclose disconnect information

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[32] Colorado Rule 723-22-5 provides that every local exchange carrier must disclose on a quarterly basis to the administrator of the Colorado DNC registry a list of changed, transferred and disconnected telephone numbers. Federal law does require a facilities-based, incumbent LEC to disclose to a non-facilities based, competitive LEC ("CLEC") when a CLEC's customer has disconnected. No additional disclosures are required.

[33] As an alternative, the FTC rather than LECs could shoulder the cost burden of translating raw disconnect data in LECs' individual and proprietary format into the FTC's preferred format. The FTC would require extensive and expensive technical expertise and facilities to accomplish these database management tasks.

to third parties such as the FTC. The FTC may be required to negotiate directly with hundreds of LECs in order to obtain authorization for LIDBs to release disconnect information. SBC does not know whether LIDBs would then be willing to contract with the FTC for the disclosure of disconnect information.

40. Likewise, the FTC may be required to negotiate directly with non-facilities based carriers rather than accessing disconnect information available from the facilities-based LEC's systems. The *Communications Act of 1934*, as amended ("Act"), requires incumbent LEC's to allow non-facilities based, competitive LECs to resell telecommunications services over other LEC's facilities on certain terms. Under this arrangement, the facilities-based LEC, not the competitive LEC, would generally maintain customer databases. The Act, however, prohibits facilities-based LECs from using such information of non-facilities based LECs for purposes other than the provision of telecommunications service.[34]

B. New Mover Lists and Number Portability Will Not Provide Adequate Information for Updating the DNC List

41. Some participants at the Forum and commenters to the Commission have suggested that change-of-address lists or number portability information could be used, perhaps in conjunction with disconnect information, to update the DNC registry. In order to use such information, however, the Commission must collect sufficient information to identify specific individuals with confidence, which means substantially more information than only an individual's "name and/or telephone number."[35] In addition, change-of-address information and number portability information simply cannot provide the comprehensive, national tracking of individuals necessary to maintain registrations on the national DNC list.

42. According to comments made by panelists at the Forum, the Direct Marketing Association ("DMA") uses the U.S. Postal Service's change of address lists to remove individuals from the DMA's DNC list. Individuals are removed if their new address falls

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34 *See* 47 U.S.C. § 222(b).

35 NPRM, 67 Fed. Reg. at 4520.

within an area code service area different from that of their old address. The FTC could not productively use the Postal Service list without collecting addresses and the names of all adult individuals in a household. In addition, change-of-address lists would not alert the FTC to all disconnected phone numbers, as individuals can change numbers without moving. Also, the DMA's approach does not capture all disconnected numbers because moving individuals relocating within the same area code would generally receive a new phone number but not a new area code.

43. Number portability information cannot provide the Commission information helpful in updating the DNC list. Currently, in order to promote competition, the FCC requires LECs to allow customers to keep their phone numbers when they change LECs but remain at the same physical location.[36] But LECs are not required to "port" telephone numbers if an individual moves to a location served by a different telecommunications switch, although individuals may be able to keep their phone numbers if they move within an area covered by a single switch.

IV. THE COMMISSION MUST CHARGE A REASONABLE FEE FOR REGISTRATION TO THE DNC LIST AND MAKE SUBSTANTIAL INVESTMENTS IN VERIFICATION AND SECURITY

44. In response to the Commission's notice regarding user fees associated with the DNC database, SBC is submitting separate comments urging that, if such a database were created, that individuals be charged a nominal fee when registering in order to facilitate verification, discourage unauthorized registrations, and help defray the cost of the DNC list. Those comments also address the Commission's lack of jurisdiction over the contents of consumer phone bills. These bills are comprehensively regulated by the FCC and state regulatory commissions. The comments also explain why the Commission cannot and should not attempt to foist the burden of DNC administration on to local telephone companies. Instead of repeating those comments here, SBC is respectfully appending a copy of them hereto as Attachment 1 for the convenience of the Commission.

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[36] 47 U.S.C. § 251(b)(2).

V. THE FTC LACKS JURISDICTION OVER COMMON CARRIERS AND THEIR AGENTS, AND THE PROPOSED RULE CONFLICTS WITH EXISTING FCC REGULATION OF TELEMARKETING BY COMMON CARRIERS

45. As SBC's previous comments have pointed out, (a) the Commission lacks jurisdiction over common carriers, their agents and their affiliates; and (b) the Commission's proposed amendments to the TSR would directly conflict with the complex, comprehensive and carefully balanced regulatory scheme developed by Congress only after extensive consideration and enforced by a different agency – the FCC. Nothing in the discussion at the Forum appears to reflect an understanding of this point, and SBC is grateful for this opportunity to clarify the record.

46. Under section 227 of the *Communications Act of 1934,* as amended (the *Telephone Consumer Protection Act* or "TCPA"),[37] the FCC exercises general jurisdiction over telemarketing by common carriers as well as by their non-carrier affiliates. Unlike the Proposed Rule, existing FCC telemarketing regulation under the TCPA provides complete jurisdictional coverage of telemarketing activities.

47. Furthermore, Congress has specifically addressed in Section 222 of the *Communications Act of 1934*,[38] as implemented by FCC, how telecommunications carriers may use CPNI they obtain in serving their customers in marketing products and services, including both inbound and outbound telemarketing. These rules, for example, prescribe when a carrier or its agent may use customer account information to market additional services, disclose such information to affiliates and when customer consent is required. If the Commission's proposed amendments to the TSR were to apply to common carriers, their affiliates or agents, handling of account information clearly authorized by well-established CPNI regulations could be branded "abusive" telemarketing practices under FTC rules.

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37 *Telephone Consumer Protection Act of 1991,* 7 FCC Rcd. 8766-67.

38 47 U.S.C. § 222.

48. Moreover, sections 272 through 276 of the *Communications Act of 1934*,[39] as amended, and the FCC's implementing regulations create an additional, carefully balanced set of rules governing marketing activities by certain carriers, including SBC, and their carrier and non-carrier affiliates. These provisions specifically address the joint marketing of carrier, affiliated carrier and non-carrier services as part of a detailed set of requirements governing the relationships and data flows among different corporate members of the SBC family. Consistent with this framework, the SBC companies telemarket each other's services; for example, customers can order non-common carrier Internet service from the common carrier telephone company, and can also order common carrier services through SBC's web services companies. Congress expressly contemplated these joint marketing arrangements as recently as 1996.

49. The proposed TSR revisions, however, do not take into account this framework and could create confusion as to which customers a telemarketer may contact and what information may pass between company affiliates. These pervasive regulations address – and often authorize – the very types of telemarketing that the Proposed Rule purports to govern. There is no need for the Commission to attempt to superimpose a new and different set of rules into this field that Congress and the FCC have already fully addressed.

A. The Common Carrier Exemption Applies to Common Carriers, Their Affiliates and Agents.

50. Products and services provided by common carriers, their affiliates and agents are not subject to regulation by the FTC. In addition, the FTC's authority does not extend to agents of common carriers who perform telemarketing services. In addition, common carrier affiliates, which otherwise might in some cases fall under FTC authority, are exempt from the Commission's jurisdiction when they perform common carrier activities, particularly where doing so is fully consistent with the Telecommunications Act of 1996 and FCC regulations promulgated thereunder.[40] For this reason, neither the

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[39] 47 U.S.C. §§ 272-276.

[40] As SBC stated in its previous comments, the cases on which the Commission relies to justify its position that the agency has jurisdiction over common carrier agents are not, in fact, cases where an agency relationship existed or where another federal agency already had regulations wholly occupying the field.

NPRM nor the Forum provides sufficient justification for the Commission's contention that "any third party hired by an exempt entity to conduct its telemarketing activities would be covered by the TSR."[41]

B. The Proposed Rule Would Interfere With Established Industry Practice, Existing FCC Regulation and Customer Expectations Relating To "Upselling"

51. SBC wishes to make certain comments in response to the discussion at the Forum on "upselling" and what the FTC terms "preacquired customer account information." As SBC's previous comments have explained, the practice of "upselling" targeted by this extension of the TSR is, in fact, common in the telecommunications industry and encouraged by federal law. Unfortunately, this Commission's proposed TSR amendments, if applied to common carriers and their agents and affiliates, would conflict with a discrete and comprehensive set of policies carefully crafted by Congress, the FCC and, in some instances, state regulatory commissions.

52. Neither the NPRM nor the Forum appears to have recognized that Congress specifically authorized certain upselling practices in the joint marketing provisions of the *Telecommunications Act of 1996*.[42] The Commission should reconsider whether the disclosure rules need apply to upselling involving two or more affiliates of a common carrier, particularly where a current business relationship exists with the called party and other federal law applies. In general, to avoid conflicts, the Commission should clarify that all activities of common carriers and their affiliates, and the activities of third party

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(Continued . . .)
See FTC v. Miller, 549 F.2d 452 (7th Cir. 1977) and *Official Airline Guides, Inc. v. FTC*, 630 F.2d 920 (2d Cir. 1980). Moreover, federal caselaw is consistent with the view, which the Commission has argued in the past, that the common carrier exemption should be interpreted so as to avoid interfering with regulation of exempt entities by agencies to which their regulation is committed. *See Miller* 549 F.2d at 457. As the FTC's Proposed Rule will inevitably conflict with the FCC's comprehensive regulation of marketing by common carriers, their agents and affiliates — arising under the FCC's exclusive and ancillary jurisdiction over communications — the common carrier exemption prevents the FTC from extending the Proposed Rule to common carriers, their affiliates and agents.

41 NPRM, 67 Fed. Reg. at 4497.

42 *See, e.g.,* 47 U.S.C. §§ 272(g) and 274(c).

agents on behalf of those common carriers and its affiliates, are exempt from the TSR and are under the FCC's jurisdiction.

C. The Proposed Rule Would Interfere With Established Industry Practice, Existing FCC Regulation and Customer Expectations Relating To "Preacquired Account Information."

53. Similarly, the Commission's proposed ban on the use by telemarketers of consumers' billing information obtained from any source other than directly from the consumer[43] fly in the face of Congressional mandates and FCC regulations, described in the previous section, that authorize a common carrier affiliate to use "preacquired account information" about a non-subscribing consumer which an affiliate makes available. Unfortunately, this conflict was not discussed at the Forum. However, in SBC's experience, where customers already have business relationship with one SBC subsidiary, they expect other SBC subsidiaries to process calls quickly. Customers do not generally distinguish between corporate entities within a parent company. Rather, they perceive that they are dealing with SBC.

VI. THE COMMISSION SHOULD FOCUS ITS EFFORTS TO ENFORCE A DNC LIST ON WILLFUL, REPEAT VIOLATORS

54. Though the Commission has proposed safe harbor provisions for businesses that would be subject to the proposed DNC regulations, inadvertent violation of DNC rules inevitably will occur despite best efforts to comply with the safe harbor provisions. In these circumstances, SBC urges the FTC not to adopt a strict liability standard, but rather focus enforcement resources on willful violators. The enforcement stance described during the Forum by the Missouri Attorney General is a worthy model, under which a clear pattern of consumer complaints is necessary before enforcement action is taken. Forbearance of the FTC's prosecutorial authority will be especially important during the transition period.

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[43] NPRM, 67 Fed. Reg. at 4501; *see also*, proposed 16 C.F.R. § 310.4(a)(5) at 4543.

VII. CONCLUSION

55. For the foregoing reasons identified at the Forum as well in its comments, SBC respectfully suggests that the proposed revisions to the TSR rule would be complex and difficult to administer. The Commission should take these complexities into account when evaluating the record in this proceeding.

Respectfully submitted,

/s/

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June 28, 2002

BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

In the Matter of

Telemarketing Rulemaking – FTC File No. R411001

User Fee Comment

COMMENTS OF SBC COMMUNICATIONS INC.

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Telemarketing Rulemaking –

User Fee Comment

COMMENTS OF SBC COMMUNICATIONS INC.

I. INTRODUCTION

1. SBC Communications Inc. ("SBC") hereby submits its comments in response to the Federal Trade Commission's ("Commission" or "FTC") *Notice of Proposed Rulemaking – Telemarketing Sales Rule User Fees* ("User Fee NPRM").[44] SBC previously filed comments[45] in response to the FTC's *Notice of Proposed Rulemaking* ("NPRM"),[46] which proposes, among other things, to create a national DNC ("DNC") list. These comments address the scheme proposed by the Commission in the User Fee NPRM to support the costs of the FTC's national DNC program.

2. Although SBC believes, based on its experience in operating telephone number-based databases, that the Commission has considerably underestimated the cost of the DNC program, it does not take a position on the amount of the proposed fee.

3. Instead, SBC will comment on the User Fee NPRM so as to respond to a suggestion raised during the FTC's Telemarketing Sales Rule Forum, held in Washington, D.C., on

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[44] 67 *Fed. Reg*. 37362 (May 29, 2002).

[45] *Telemarketing Rulemaking – Comment*, Comments of SBC Communications Inc., FTC File No. 411001 (April 18, 2002).

[46] Telemarketing Sales Rule; Proposed Rule, 67 Fed. Reg. 4492 (January 30, 2002) ("Proposed Rule" or "NPRM").

June 5-7, 2002 ("Forum"), to the effect that, if the Commission decides to impose a reasonable fee on end users that register for the DNC list, telephone companies should collect those fees on their bills. In reply, SBC respectfully submits that:

- Individuals must pay a nominal fee when registering for the national DNC list. A small registration fee would facilitate verification of a registrant's identity, discourage unauthorized registrations, and defray some of the likely tremendous costs of running an accessible, up-to-date and secure national DNC list. A number of states have imposed a reasonable fee upon consumers who register on state DNC lists.

- The Commission unquestionably lacks the authority to require telecommunications carriers to collect consumer fees via billings for telecommunications services. This would require the FTC to enter into hundreds of billing and collection agreements with each and every telecommunications carrier, cable provider and wireless provider.

- Even if the FTC had jurisdiction, billing format and content are highly regulated by tightly-knit state and federal regulation with which FTC rules would inevitably conflict.

- Finally, state and federal regulations establish the priority of service providers' claims where individuals fail to pay their bills in full. The FTC would not have a clear remedy for nonpayment of fees. Establishing the FTC's payment priority would require extensive federal and state efforts.

II. THE COMMISSION MUST CHARGE A REASONABLE FEE FOR REGISTRATION TO THE "DO NOT CALL" LIST TO ESTABLISH REGISTRANT IDENTITY AND OFFSET POTENTIALLY STAGGERING ADMINISTRATION COSTS

4. The Commission should charge individual registrants to the DNC list a reasonable fee. This would help to authenticate their identity, discourage improper use of the DNC registry and offset the likely substantial costs of administering the national DNC list. A number of states have imposed a reasonable fee upon consumers who register on state DNC lists.

A. Individuals Must Pay a Fee to Establish Their Identity and Discourage Unauthorized or Anticompetitive Registrations

5. SBC agrees with many participants at the Forum that the proposed system for DNC registration must reliably authenticate that the individual registering a number on a DNC list is the owner of the line with responsibility for its control and usage. Absent

authentication, any individual residing in a household, or simply being in the house, without legal claim to a telephone account can opt-out an entire household from lawful telemarketing. In addition, as one panelist pointed out during the Forum, bad actors could manipulate the process by opting-out potential customers from telemarketing by their competitors while facilitating an opt-in to their own telemarketing.[47] The Commission has long recognized the importance of authentication in other privacy contexts; no less is required here.

6. A simple means of authenticating identity and, at the same time, discouraging abuse of the registration procedure is to require individuals to pay a small fee to register on the DNC list. Payment of fees, such as via credit card, will enable verification of individuals' identity and discourage unauthorized and anticompetitive registrations.

B. Fee Payments By Individuals Would Help Offset the Substantial Costs of Administering the Do Not Call List

7. Another reason for requiring individuals that receive the benefit of the national DNC list to pay a small fee for that service is to help offset its substantial, and as yet uncertain, cost. Based on its decades-long experience managing large databases of consumer information, SBC continues to believe that the Commission has significantly underestimated the costs of creating and administering a workable, up-to-date and secure DNC list.

8. In the User Fee NPRM, the Commission proposes that charging telemarketers an annual fee to access the DNC database of $12 per area code will be sufficient "to recover the full cost to the Federal Government" of providing the DNC service.[48] SBC believes that the costs of the DNC database would prove to be considerably larger than what the Commission now assumes, and that assessing only the proposed fee on telemarketers would result in a serious revenue shortfall. This shortfall should not be borne wholly by

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[47] At the Forum, Tyler Prochnow of the American Teleservices Association stated that a Georgia energy company had in fact offered to register individuals for the state DNC list in order to block competitors' telemarketing while allowing for its own.

[48] 67 *Fed. Reg*. at 37363-64.

the federal Treasury or by telemarketers (who have cautioned the Commission about overly-optimistic cost projections throughout this proceeding). Instead, it would be reasonable to require participating consumers to help to defray the costs of a program allowing them to opt-out of legal and responsible telemarketing.

9. SBC's previous comments on the proposed TSR amendments addressed the likely expenses involved in creating, managing and securing a national DNC database. The Commission is ignoring estimates accepted by the Federal Communications Commission ("FCC") in 1992 that a national DNC list would cost between $20 million and $80 million to create and approximately $20 million annually thereafter to manage.[49] These cost figures are far greater than the FTC's estimate that the national registry would cost approximately $5 million in its first year and less thereafter.[50] This discrepancy, and other warnings brought to the Commission's attention throughout this proceeding by SBC and others, gives reason to question the estimates submitted by hopeful DNC-service vendors in response to the Commission's "Request for Information."

10. In addition, the Commission or its agents would likely incur substantial costs in providing security for the DNC database. As the Commission acknowledges, the DNC database would be accessed by millions of individuals and thousands of companies seeking to register, update registries or "scrub" telemarketing databases. The sheer size and contents of such a database would create a substantial risk of a "privacy Exxon Valdez," in which the personal information of millions of individuals may be inadvertently disclosed. The FTC must hold itself, its employees and its agents to the same high privacy and security standards to which it holds businesses.

11. It is not unreasonable or unprecedented to ask consumers who would benefit from the national DNC list's service, which would block perfectly lawful telemarketing, to

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[49] *Rules and Regulations Implementing the Telephone Consumer Protection Act of1991*, 7 FCC Rcd 8752, 8758 (1992) (Report and Order) ("Estimates to start and operate a national database in the first year ranged from $20 million to $80 million, with commenters agreeing that operation would cost as much as $20 million annually in succeeding years.").

[50] 67 *Fed. Reg*. at 37363.

shoulder a portion of the cost of that service. Charging consumers for benefits collateral to telecommunications services is not unusual. Existing federal and state laws require consumers to pay Local Number Portability charges, which help defray of the costs of allowing consumers to maintain their phone numbers when they change carriers, and Universal Service Fund contributions, which subsidize the connectivity of low-income and rural communities and thus increase the value of telephone networks for all customers.

12. Charging consumers a fee for DNC service is a frequent component of state DNC programs. Alaska, Arkansas, California, Florida, Georgia, Idaho, Maine, Oregon, Texas and Wyoming charge their citizens fees, ranging up to $10 annually per line, for the service of blocking telemarketing calls, whether operated by the state or through use of the Direct Marketing Association's service.[51] Such arrangements are workable and fair according to many participants at the Forum. As it may be reasonable to expect that consumers registering to the national DNC list would receive greater benefits from the national DNC list than state lists, because there is more interstate than intrastate telemarketing, fees higher than $10 annually per line could be justifiable.

III. THE COMMISSION MUST REJECT PROPOSALS TO SHIFT THE BURDEN TO COLLECT "DO NOT CALL" USER FEES TO COMMON CARRIERS

13. If the Commission decides to seize the authentication and revenue-enhancing advantages of charging individuals a fee to register on the national DNC list, the FTC must nonetheless reject proposals, raised at the Forum and elsewhere, that telecommunications carriers should be required to: (a) report on monthly billing statements whether individuals have registered with state or national DNC lists; (b) collect, process and forward registration fees to the relevant state or federal DNC administrator; (c) transmit registration information to the DNC registry; and (d) give

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[51] Alaska Stat. Ann. § 45.50.475; Ark. Code Ann. § 4-99-401; California S.B. 771 (to be codified at Cal. Bus. & Prof. Code § 17590); Fla. Stat. Ann. § 501.059; Ga. Code Ann. § 46-5-27; Idaho Code § 48-1003A; Me. Rev. Stat. § 14716; Or. Rev. Stat. § 646.574; Texas H.B. 472 (to be codified at Tex. Bus. & Com. Code Ann. § 43.0001); Wyo. Stat. Ann. § 40-12-301.

individuals notice of registrations' expiration dates and an opportunity to re-register. Foisting the burden of DNC administration on local exchange carriers ("LECs") is beyond the Commission's authority, would ignore intractable technical problems and would place LECs in a wholly untenable position. Unfortunately, the net result would be to shift the costs of managing the system to all local telephone customers.

14. The Commission acknowledges that it does not have jurisdiction over LECs.[52] This fact alone prevents the agency from forcing LECs to bear the burdens listed above. Moreover, the FCC has stated, in the context of a proceeding concerning the content of billing statements, that "the FTC does not have jurisdiction over the activities of common carriers."[53] Rather, the FCC has asserted jurisdiction over both interstate and intrastate communications with respect to billing (although states may have concurrent jurisdiction in some respects) because billing "is an integral part of [a] carrier's communication service."[54] In the FCC's *Truth in Billing Proceeding*, the FTC implicitly acknowledged the FCC's exclusive jurisdiction by submitting comments to that agency.

15. In addition, a suggestion made at the Forum that the Commission could require LECs to collect DNC fees via telephone bills utterly ignores long-standing federal and state rules that comprehensively regulate the format and content of telephone billing statements.[55] Line items may not appear on a bill unless they conform to all applicable orders from the FCC or state regulatory commissions. For example, as recently as 1999, the FCC provided comprehensive guidance regarding telephone billing in a proceeding to simplify and clarify billing statements. To this end, the FCC has rejected using telephone service billing statements as vehicles unrelated to the provision of telecommunications

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52 *See, e.g.,* NPRM, *supra* nt. 45, at 4519, nt. 265.

53 *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, 7508 (1999) (First Report and Order and Further Notice of Proposed Rulemaking)(1999).

54 *Id.* at 7506.

55 *See, e.g.,* 47 C.F.R. § 64.2400 (the "Truth in Billing" rules).

services. Additionally, the bill statements would also have to comply with various state rules regarding truth in billing, bill verification, and anti-cramming regulations.

16. For example, these rules would require a LEC that includes any DNC information/notification on the bill to retain information sufficient to verify that the customer was properly on the DNC. Since only the FTC would have this verification, LECs would look to the FTC for indemnification from claims by customers.

17. More generally, no LEC should be required to bill DNC fees or otherwise administer DNC registrations based on information received from third party sources, such as third parties that might offer "do not call" registrations services for individuals or from vendors managing the national DNC list, unless the information sufficiently identifies individuals.[56] As Mr. Scruggs of SBC pointed out at the Forum, this would require, at a minimum, that the national list contain not only telephone numbers, but also billing name and address information. This is because when a LEC would make a representation on a bill in reliance on third-party information, the LEC risks violating extensive federal and state truth-in-billing regulations. Rules designed to prevent cramming and slamming[57] set a high bar for accuracy that LECs cannot meet if they are dependent on unverifiable information related to DNC registrations.

18. Finally, well-established federal and state telecommunications regulations establish the payment priority for various service providers in the event bills are not paid in full. Regulated telecommunications services normally are paid first; DNC registries are not even "in line" for payment at this time. Thus, to ensure a priority higher than last place, the Commission would be forced to engage in extensive, tedious proceedings with FCC

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[56] Although Alaska's program for opting-out of telemarketing does require LECs to give consumers an opt-out opportunity through a billing statement insert and to process opt-out fees, a LECs is merely required to place a "black dot" next to consumers' name *in the LEC's own telephone directory*. In addition, LECs are not required to process fees for individuals other than their own customers. Thus, the Alaska program is not strictly a state DNC list. The Alaska law is a wholly inappropriate model for the administration of a national DNC list, which would involve many times more individuals, carriers, telemarketers and much more complex database and associated administrative issues.

[57] "Cramming" refers to the inclusion of unauthorized charges on bills. "Slamming" refers to the authorized change of a person's presubscribed interexchange carrier.

and state public utility commissioners, and the outcomes could differ from state to state. It would also be necessary to determine whether non-payment of a DNC registration fee would justify removal from the DNC list, and what authority LECs possess to accomplish that removal.

VIII. CONCLUSION

19. For the foregoing reasons, if the Commission establishes a DNC registry, the Commission should impose a reasonable fee on consumers to register for the national DNC list. At the same time, the Commission must also reject suggestions that telecommunications carriers could be required to collect and process such fees. The Commission lacks authority to take such action, and could not do so without creating unfair and conflicting obligations on telecommunications carriers.

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