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

In the Matter of	)	
	)	
Telemarketing Rulemaking -	)	FTC File No. R411001
Revised Fee NPRM	)	
	)	
	)	

COMMENTS OF SBC COMMUNICATIONS INC.

Counsel:

Paul Mancini
Vice President and
Assistant General Counsel
Cynthia J. Mahowald
Vice President and General Counsel

SBC Communications Inc.
1401 "I" Street, N.W. Suite 1100
Washington, D.C. 20005
(202) 326-8868

May 1, 2003

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

In the Matter of	)	
	)	
Telemarketing Rulemaking -	)	FTC File No. R411001
Revised Fee NPRM	)	
	)	
	)	

COMMENTS OF SBC COMMUNICATIONS INC.

I. INTRODUCTION

SBC Communications Inc. ("SBC") hereby submits its comments in response to the Federal Trade Commission's ("Commission" or "FTC") *Revised Notice of Proposed Rulemaking – Telemarketing Sales Rule* ("Revised Fee NPRM").[1] SBC previously filed comments in response to the FTC's *Notice of Proposed Rulemaking* ("NPRM") to create a national Do-Not-Call registry, Supplemental Comments in the same matter, and Comments in the FTC's *Notice of Proposed Rulemaking – User Fee*[2]. On February 20, 2003, President Bush signed the *Do-Not-Call Implementation Act*[3]. These comments are filed in the context of and address the FTC's proposed process and fee structure to access the Do-Not-Call registry ("DNC registry").

SBC does not comment herein on the jurisdictional issues regarding the Federal Communication Commission's ("FCC") jurisdiction and regulation over telemarketing practices of and on behalf of common carriers which comments were set forth in the pleadings noted above.

---

[1] Proposed Revised Telemarketing Sales Rule, 68 Fed. Reg. 16238 (April 3, 2003) and 16 C.F.R. Part 310.

[2] Telemarketing Sales Rule; Proposed Rule, 67 Fed. Reg. 4492 (January 30, 2002).

[3] Pub. L. No. 108-10 (2003).

II. ACCESS FEE

Separate divisions, subsidiaries, or affiliates of the same parent company offering similar or related products or services should be treated as the same single seller under the Revised Fee rule and permitted to use the unique access number of one of its affiliates who paid the annual fee to access the DNC registry without each affiliate paying an additional annual fee.

The Commission's intent in the Revised Fee NPRM is to raise funds in an equitable manner and to avoid billing entities twice for the same information. The Commission stated that it does not intend to charge the same company multiple times for access to the national registry. Notwithstanding this premise, the Commission did raise concerns regarding its ability to raise sufficient funds if each affiliate wasn't treated as a separate seller and proposes to treat each affiliate as a separate seller charging each a separate access fee.

This bright line test of treating each affiliate as a separate seller will result in unintended consequences to some companies. In the case of SBC, our corporate organization is structured in large part due to regulatory and legal requirements. SBC has twenty-four separate telephone companies and at least nineteen other separate affiliates providing voice mail services, internet services, high speed broadband services, yellow pages, consumer premise equipment, etc., resulting under the current proposal in over forty-four separate annual fees, even though the services provided by the family of companies are similar or related services and consumers have a reasonable expectation that they are dealing with one company. SBC's corporate organization is focused on the consumer and one stop shopping. SBC sells its services by providing joint marketing of affiliate services, same sales channels, single billing for those services, single unified bill resolution, and providing customer service for the family of services by one call. We have the same corporate branding across our service areas. Consumers know us as SBC regardless of whether the services are provided through multiple separate affiliates.

Additionally, the FTC also noted in its TSR order that regulatory requirements often dictate the corporate structure which markets products and services across holding company affiliates and subsidiaries. Such is the case with SBC. Congress and the FCC have developed the statutory and regulatory framework of telemarketing by and on behalf of common carriers, their agents, and their affiliates. Consistent with this framework, the SBC companies telemarket each other's products and services. For example, customers can order Internet services from the telephone company and also order telecommunications services through SBC's web services companies. Congress expressly contemplated these joint marketing arrangements as recently as 1996. These subsidiaries and affiliates of the SBC family of companies should be treated as one seller under the FTC's Revised Fee rule. Treating each of these affiliates as a separate seller will result in SBC paying multiple times for access to the same list and it is not a fair and equitable means of funding the DNC registry as contemplated by the Commission.

The legal and regulatory requirements for SBC to provide a service through separate affiliates is not an industry standard, many of these requirements are upon SBC alone, or also upon the other Regional Operating Companies. Competitors like AT&T, MCI WorldCom, Sprint, etc. do not have the same legal separation obligations and can provide similar services out of one company. It is not fair nor equitable that SBC should have to pay numerous annual access fees while companies providing similar services do not.

In contrast, if the types of goods or services sold by various divisions or affiliates of a parent corporation are substantially different, then those affiliates may appropriately be classified as separate sellers. In such case, consumers may perceive the division or affiliate to be different from other divisions or affiliates of the corporate organization as a whole. For example, a corporation where one affiliate sells diapers and another affiliate sells coffee, and yet another affiliate sells automobile tires. In that case, treating each affiliate as a separate seller seems reasonable. However, where there is similarity or related products and services of a family of companies with a general name brand, only one company within that family should be required to pay the annual fee to access the DNC registry.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the Revised Fee rule classifying multiple divisions, subsidiaries, or affiliates of the same corporate organization offering similar or related products and/or services as one single seller, thereby permitting shared use of the unique access number of one of its divisions, subsidiaries, or affiliates without paying an additional DNC registry fee. This fee structure results in the fair and equitable fee structure contemplated by the Commission.

Respectfully submitted,

/s/______________________________

Paul Mancini
Vice President and
Assistant General Counsel
Cynthia J. Mahowald
Vice President and General Counsel

SBC Communications Inc.
1401 “I” Street, N.W. Suite 1100
Washington, D.C. 20005
(202) 326-8868

May 1, 2003