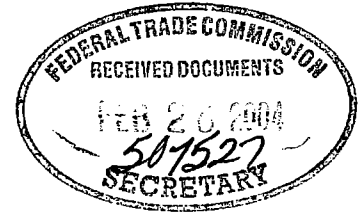


**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**



In the Matter of)
)
Amending the Telemarketing Sales Rule) FTC File No. 411001
Monthly Registry Access, Project No.)
R411001 - Comment)

**COMMENTS OF
SBC COMMUNICATIONS INC.**

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February 26, 2004

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COMMENTS OF SBC COMMUNICATIONS INC.

1. SBC Communications Inc. ("SBC"), hereby submits its comments in response to the Federal Trade Commission's ("Commission" or "FTC") *Notice of Proposed Rulemaking* ("NPRM")¹ which proposes to amend the Telemarketing Sales Rule ("TSR").²

2. SBC submitted comments in the FTC's initial rulemaking to amend the Telemarketing Sales Rule to implement a national Do-Not-Call Registry.³ In those comments, SBC noted its broad-based and informed perspective in maintaining a do-not-call registry. SBC's local exchange common carrier subsidiaries provide approximately 65 million telephone lines, and its common carrier long distance companies serve more than 3 million subscribers. SBC's advanced services subsidiaries, currently treated as common carriers by the Federal Communication Commission ("FCC"), serve more than 1.25 million lines of high speed data transport in SBC's thirteen states of operation. Prodigy and other SBC Internet service providers, which under current regulation are not common carriers, connect more than three million subscribers to the Internet. SBC also operates web services businesses, as well as management services, telecommunications equipment, and directory companies.

¹ Telemarketing Sales Rule; Proposed Rule, 69 Fed. Reg. 7330 (February 13, 2004) ("Proposed Rule").

² 16 C.F.R. Part 310.

³ Telemarketing Sales Rule; Proposed Rule, 67 Fed. Reg. 4492 (January 30, 2002).

3. SBC supports the consumer privacy and protection principles inherent in the FTC's Telemarketing Sales Rule ("Rule") and the implementation of the Federal Do-Not-Call Registry (the "Registry"). However, while the Commission is obligated to amend its Rule consistent with the Consolidated Appropriations Act of 2004 ("Appropriations Act"),⁴ the Proposed Rule goes beyond the statutory obligation, creating obligations beyond the intent of Congress. The Proposed Rule not only requires obtaining a new version of the Registry every thirty (30) days, but also requires fully purging the seller or telemarketer databases every thirty (30) days, which is nearly impossible to implement, and adds additional cost. Additionally, it would be highly unlikely that any seller or telemarketer could confidently update any accurate database purge under this time interval of obtaining the list and updating it also within thirty (30) days.

4. The Commission acknowledged in its order amending the Rule to implement the Registry that the costs of requiring monthly updates of the Registry outweighed any additional benefits. While the Commission is obligated to comply with its statutory mandate, the mandate does not require a seller or telemarketer to use a version of the Registry updated no more than thirty (30) days prior to the date a call is made.

5. First, SBC opposes the Commission's suggested change from the statutory language in the Appropriations Act of obtaining the list once a month to obtaining the list every thirty (30) days. The Commission in adopting the every three (3) months interval acknowledged the cost of a more frequent purging of the Registry. While the Commission must comply with the statutory mandate, proposing a thirty (30) day interval would require purging more frequently than twelve (12) times a year. This would result in an unnecessary additional expense. Additionally, the reasoning of the Commission in the Proposed Rulemaking asserting that the term thirty (30) days provides more clarity is a bit confusing. Regardless if the interval is monthly or every thirty (30) days, every seller or telemarketer will be obtaining the new Registry on its own recurring date, whether that is the first of the month, the last day of the month, the 5th day of the month, or the 25th day of the month, etc. The Rule requires specific requirements for sellers and

⁴ 108 P.L. 199, 2004 Enacted H.R. 2673; 108 Enacted H.R. 2673.

telemarketers to establish written procedures to show compliance with the Rule. This can easily be done if the interval is monthly, no different than the procedures under the current interval of every three (3) months.

6. Additionally, the Commission's Proposed Rule requiring implementation no more than thirty (30) days prior to the date any call is made goes well beyond Congressional intent in the Appropriations Act. This would in effect require the seller or telemarketer to not only obtain the list, but then to purge and run them against the multiple seller or telemarketer databases, in effect on a daily basis, such that a consumer could assert a valid Do-Not-Call complaint thirty (30) days after entering his or her number on the Registry. This additional requirement as proposed would actually require obtaining the Registry list on a daily basis and purging it against the seller or telemarketer databases on a daily basis, otherwise there would be no way to maintain a list such that a consumer is not called thirty (30) days after placing his or her number in the Registry. Such updating and purging of the seller and telemarketer databases is not required by the language in the Appropriations Act.

7. It may take several weeks or longer for an accurate usable list to be obtained when scrubbing the seller or telemarketer current database of potential contacts against the Registry, and then time to disseminate it throughout the seller or telemarketer organizations. While sellers and telemarketers can obtain the list monthly, some additional time, such as thirty (30) days from the last day of the month in which the new Registry list was obtained, should be provided for in the Proposed Rule. If a seller or telemarketer obtains the list on a monthly basis, it would be nearly impossible to download and implement it, such that a consumer could raise a valid complaint thirty (30) days after placing his or her number on the Registry. For example, if a seller or telemarketer makes it a practice to obtain the Registry list on the first of every month, *i.e.*, March 1, April 1, May 1, etc., customers who put their name on the list on March 1, would have a valid claim on March 31, before the new list is actually obtained with that customer's number on April 1.

8. The proposed rule would actually require obtaining the list on a daily basis, which is beyond the intent of Congress. The actual language in the Appropriations Act requires the Federal Trade Commission to “amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the “do-not-call” registry once a month.” No where does it also require that seller or telemarketer to also then implement it on a thirty (30) day basis.
9. The purpose of the Commission’s safe harbor provision was to give protection to the seller or telemarketer who strives to comply with the regulations, but on an inadvertent or occasional basis, places a call to an individual who has placed his or her name in the Registry. A significant number of comments were filed in the Commission’s initial rulemaking raising concerns about the inability of sellers or telemarketers to confidently implement a scrubbed list in less than a month, even those sellers or telemarketers with very limited calling programs. The Commission must recognize the time it will take for sellers and telemarketers to purge the new Registry list into its databases. Most sellers and telemarketers have complex processes used to prepare telemarketing lists and run them against updated calling lists and sales campaigns. It would be impossible to accurately implement the new Registry list instantaneously when the list is obtained.
10. Therefore, we propose that sellers and telemarketers obtain the updated Registry on a monthly basis but be given thirty (30) days from the last day of the month in which the updated Registry list was obtained, to upload and update its suppression tables and databases to match that of the new Registry list obtained in the prior month before the seller or telemarketer would be in violation of the Proposed Rule. Even after the seller or telemarketer obtains the monthly list, there is still a chance that a consumer whose name is on the monthly list may receive a telemarketing call because it takes time to update the call and suppression databases. This additional thirty (30) days to implement will give sellers and telemarketers a reasonable opportunity to ensure that their own internal databases can be updated accurately. Not extending the date of implementation by thirty (30) days will inflict unnecessary costs and burdens on sellers and telemarketers.

11. The Commission also sought comment on the appropriate effective date for the proposed amendment. The change from every three (3) months to monthly or every thirty (30) days will take time to re-program the databases and develop processes and procedures to comply with the Proposed Rule. SBC suggests that the Proposed Rule not be effective until six (6) months after it is published in the Federal Register to ensure that there are methods and procedures in place for full compliance. Furthermore, this is a statutory obligation and SBC is unaware of any consumer complaints regarding the current interval. The Commission should be mindful of the additional costs to sellers and telemarketers that will result with this change to the Rule, shortly after the adoption of the initial Rule implementing the Registry. Additionally, the Commission will also have programming changes to comply with the shorter interval. If a customer signs up on March 1, is that number input into the Registry on March 1st, or some later date. The Commission noted in its order adopting the Rule to implement the Registry that it would “periodically” check all telephone numbers in the Registry against all databases. The new proposed interval will take time for not only sellers and telemarketers to comply, but also the Commission to have an accurate database.

12. Consistent with the comments and concerns set forth above, SBC suggests that the Commission adopt a rule that would require, consistent with the statutory mandate, that sellers and telemarketers obtain an updated Registry list once a month, but additional time is given to actually load and purge this list against the seller and telemarketers databases. SBC suggests that the Proposed Rule be revised to read:

(b) * * *

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the “do-not-call” registry obtained from the Commission once a month and implement this monthly list no later than thirty (30) days from the last day

of the month in which the new monthly Registry list was obtained. A seller or a telemarketer shall not be in violation of §§310.4 if it can demonstrate the violation is a result of error and that it has established procedures to implement the new monthly Registry list as set forth above.”

13. For the foregoing reasons, SBC reiterates that the Proposed Rule goes beyond the intent of Congress and places undue cost and expense upon sellers and telemarketers, without any appreciable benefit to consumers. SBC urges the Commission to reconsider the proposed amendments to the TSR and adopt a rule that complies with the statutory mandate yet not impose undue burden and expense upon sellers and telemarketers, or adopting a rule which may be impossible to implement as set forth in the Proposed Rule, with any confidence that purging within the proposed short time interval will result in an accurate do-not-call list.

Respectfully submitted,

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