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Federal Trade Commission
Office of the Secretary
Room 159–H (Annex D)
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Re: Monthly Registry Access, Project No. R411001

The Verizon companies[1] ("Verizon") hereby respond to the Commission's request for public comment regarding how to implement the requirement in the Consolidated Appropriations Act of 2004, which instructs the Commission 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." The Commission should modify its rules to track as closely as possible the Congressional language, in order to give companies flexibility to implement systems that comply with Congressional

[1] The Verizon companies ("Verizon") include local exchange carriers, long distance companies, and Internet services. Some of these companies are carriers, not covered by the Commission's telemarketing rules, but which are subject to the telemarketing regulations of the FCC.

intent of requiring monthly updates. It should not adopt a "30 day" rule, or use other language in the rule that would effectively require companies to download information from the FTC registry *more than* once a month.

Under the current safe harbor provisions of the do-not-call rules, companies are not liable for "abusive" telemarketing practices if they can show they have a system in place to prevent telemarketing to telephone numbers on the do-not-call list, "employing a version of the 'do-not-call' registry obtained from the Commission no more than three (3) months prior to the date any call is made." 16 C.F.R. § 310.4(b)(3)(iv). On January 23, 2004, the Consolidated Appropriations Act of 2004 was enacted, directing the Commission to adopt rules to require telemarketers "to obtain from the Federal Trade Commission the list of telephone numbers on the 'do-not-call' registry once a month." Notice, 69 Fed. Reg. 7330. The Commission has asked whether it should implement this requirement by simply amending the safe harbor provision to replace the "no more than three (3) months prior to the date any call is made" language with the phrase "no more than thirty (30) days prior to the date any call is made." *Id.*

The regulation proposed in the Notice, however, imperfectly implements the Act's intent, because it would require companies to update their do-not-call databases significantly more often than the "monthly" update cycle intended by Congress. There are two problems with the proposed rule change. First, it would shorten the relevant period by changing the term "monthly" to "thirty days." Second, a rule that measures the "monthly" (or "thirty day") requirement from the time when the list is "obtained" to the time when the customer is "called" – as opposed to simply requiring the information to be "obtained" on a monthly basis – ignores the fact that it takes time for companies to

scrub and update their data, and to get a final do-not-call list in the hands of the persons actually making the calls, and thus would have the effect of requiring companies to update data far more often than once a month.

The purpose of the change in the Act was "[t]o improve responsiveness to an individual's decision to enroll in the Do-Not-Call program."[2] Verizon fully supports this improved responsiveness to consumer requests, and, in fact, Verizon already obtains updates from the Commission's registry on a monthly basis, even though it is not required to do so. Under its current processes, Verizon downloads the do-not-call list from the Commission the first Friday of the month, and spends the weekend "scrubbing" Verizon's internal lists against the do-not-call registry.[3] Verizon then makes the revised data available to telemarketing vendors, beginning Monday morning. Thus, even though Verizon and its vendors obtain a new list "monthly," there can be a gap of several days between the time the list is downloaded from the Commission and when it is actually used by telemarketers to make calls.[4] Because months often are longer than 30 days, and because there is a lag between the time when a company "obtains" the do-not-call list from the Commission and when it uses that list to make telemarketing calls, Verizon's monthly system of updates – although clearly complying with the Congressional mandate – would not satisfy the Commission's proposed rule language.

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[2] 149 Cong. Rec. H12323, 12522.

[3] "Scrubbing" involves taking Verizon's internal lists and bringing them in compliance with the national do-not-call registry. Verizon also periodically "scrubs" its internal lists against state do-not-call registries, the Verizon company-specific do-not-call registry, and the direct marketing association do-not-call registry.

[4] The Commission noted that scrubbing lists takes time in the order adopting the DNC registry. 68 Fed Reg. 4580, 4641 (noting that telemarketers had to "allow[] themselves sufficient time to scrub their calling lists before placing outbound telemarketing calls in the seventh month after the date the contract is awarded").

For example, looking at the 2004 calendar, assume Verizon "obtained" the do-not-call list from the Commission on the first Friday in April (April 2), scrubbed the data, and vendors obtained the list from Verizon the following Monday (April 5) and started using it for future telemarketing calls the next morning (April 6). If the safe harbor rules allowed telemarketers to comply if they "obtained" new data every month, the following month, Verizon could download the new do-not-call list on the first Friday in May (May 7), and telemarketers could obtain the list on the following Monday (May 10) and start using it for new calls the following day (May 11). While in some months (such as in this example) there would be greater than thirty days between the time when lists were obtained, in other months the time would be shorter (*e.g.*, the next update in the example above would be Friday, June 4).

However, if the Commission adopts the proposed rule language in the Notice, Verizon would have to make significant adjustments to its current system. As an initial matter, using the "thirty days" language, if Verizon obtained the first list on April 2, the second list would have to be obtained no later than thirty days later – *i.e.*, before Sunday, May 2. Moreover, even this adjustment would not be sufficient to satisfy the Commission's proposed rule if the telemarketer had to use "a version of the 'do-not-call' registry obtained from the Commission no more than thirty (30) days prior to the date any call is made." That is because, in the example above, even though the telemarketer vendor did not receive the data until April 5 (after it had been scrubbed), the list was "obtained from the Commission" on April 2. Thus, the list would effectively "expire" thirty days after it was "obtained from the Commission" – here, on May 2. Finally, if the Commission adopted a rule that relied on such technical, "bright line" mathematical

calculations – for example, if a company that made monthly updates could nonetheless be liable if some of its lists were 31 days old – companies also would have to build some additional "cushion" into their processes so that if something went wrong they would have time to fix the system before facing a do-not-call violation.

The only way for a seller to bring itself within the safe-harbor the way the Commission has drafted the proposed revised section 310.4(b)(3)(iv) would be to obtain the do-not-call list more frequently than "once a month," perhaps every three weeks, which, of course, is a more onerous obligation than Congress imposed.

To solve this problem and to implement the monthly updating requirement of the Appropriations Act, the Commission should instead modify its proposed section 310.4(b)(3)(iv) to read:

> 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), *to obtain a new* ~~employing a~~ version of the 'do-not-call' registry ~~obtained~~ from the Commission no *less* ~~more~~ than *once each calendar month, and in no event more than forty (40) days after the prior version was obtained,* ~~three (3) months prior to the date any call is made~~ *and to employ each new version promptly after obtaining it*, and maintains records documenting this process....

Such a rule change directly tracks the language of the Act and, for the reasons stated above, more closely fits the Congressional intent of requiring monthly updates than the language proposed in the Notice. In addition, by adding forty (40) days as an outside limit, the Commission will allow carriers to continue regular updates on a schedule such

as that currently used by Verizon, but also eliminate the potential for gamesmanship that the Commission was concerned might occur without a specific deadline.[5]

For these reasons, Verizon urges the Commission simply to incorporate the language of the Appropriations Act into its regulations and to require telemarketers to obtain new DNC lists once each month, with an outside limit of forty (40) days between updates.

Respectfully submitted,

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[5] For example, the Notice suggests changing from "monthly" to "thirty days" or other limiting language would be necessary to forestall a gaming opportunity which would allow telemarketers to "subvert[] the intent of the Registry by such stratagems as downloading the Registry at 11 p.m. on the last day of one calendar month and again at 12:01 a.m. on the first day of the next, thereby technically complying with the requirement, but effectively 'scrubbing' only bi-monthly." *See* Notice, 69 Fed. Reg. 7330.