

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions Seeking Rulings on	)	CG Docket No. 11-50
Certain Definitions under the Telephone	)	
Consumer Protection Act of 1991 and its	)	
Related Rules	)	

COMMENT OF THE  
FEDERAL TRADE COMMISSION

The Federal Trade Commission appreciates this opportunity to provide comments in response to the Public Notice (DA 11-594) released on April 4, 2011. That Public Notice requested comments on two questions:

1. “Under the TCPA, does a call placed by an entity that markets the seller’s goods or services qualify as a call made on behalf of, and initiated by, the seller, even if the seller does not make the telephone call (*i.e.*, physically place the call)?”
2. “What should determine whether a telemarketing call is made ‘on behalf of’ a seller, thus triggering liability for the seller under the TCPA? Should federal common law agency principles apply? What, if any, other principles could be used to define ‘on behalf of’ liability for a seller under the TCPA?”<sup>1</sup>

The Federal Trade Commission (“FTC”)<sup>2</sup> urges the Federal Communications Commission (“FCC”) to hold that: (1) under the Telephone Consumer Protection Act (“TCPA”), a call placed by an entity that markets the seller’s goods or services does, indeed, qualify as a call made on behalf of, and initiated by, the seller even if the seller did not place the call; and (2) the plain meaning of “on behalf of” should be employed when determining whether a seller should be held liable for a marketer’s violative

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<sup>1</sup> The Public Notice also states: “Additionally, we solicit comments addressing the applicability of federal agency law and federal joint venture law to the TCPA liability questions presented herein.”

<sup>2</sup> One of the petitions that led to the FCC’s initiation of this proceeding arose from a Telemarketing Sales Rule enforcement action against DISH Network that is being litigated by the United States Department of Justice (“DOJ”) on behalf of the FTC. *United States and the States of California, Illinois, North Carolina and Ohio v. DISH Network, LLC*, Case No. 09-cv-3073, Order (C.D. Ill. order of February 4, 2011) (directing the parties to seek FCC guidance under the doctrine of primary jurisdiction). That case involves tens of thousands of complaints that consumers filed with the FTC, evidence of DISH Network and its marketers calling consumers whose telephone numbers were on the Do Not Call Registry, and evidence of DISH Network marketers improperly using pre-recorded telemarketing messages.

telephone calls made to market or sell the seller's goods or services. The FTC also urges the FCC to rule that the TCPA creates a statutory cause of action that imposes liability on a seller or a marketer for its violations, unless the seller or marketer can show that it satisfies the requirements set forth in the safe harbor. As described below, protecting consumers' privacy demands a uniform and comprehensive interpretation of "on behalf of." The plain meaning of the words "on behalf of," as well as the regulatory framework of the TCPA itself support this interpretation. Similarly, Congress's intent in passing the TCPA strongly militates against any attempt to import federal agency law and joint-venture law into the TCPA and its related rules. A more restrictive interpretation could jeopardize Congress's privacy-protection goals.

### *Background*

The FTC is an independent administrative agency charged with promoting consumer protection, competition, and the efficient functioning of the marketplace. Our law enforcement authority in the consumer protection arena is primarily based on Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits "unfair or deceptive acts or practices in or affecting commerce,"<sup>3</sup> as well as various statutes and rules, including the Telemarketing Sales Rule ("TSR").<sup>4</sup> As illustrated by the FTC's case against DISH Network,<sup>5</sup> enforcing the Do Not Call provisions of the TSR is one of the FTC's core consumer-protection responsibilities in the arena of safeguarding Americans' privacy.

In 1991, Congress found that telemarketing had grown substantially and that calls seeking to sell products and services "can be an intrusive invasion of privacy."<sup>6</sup> Congress further found that "[o]ver half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations."<sup>7</sup> A Congressional committee recognized that, "federal legislation [was] needed to both relieve states of a portion of their regulatory burden and protect legitimate telemarketers from having to meet multiple legal standards."<sup>8</sup> Congress accordingly enacted the TCPA to give the FCC the authority to regulate interstate and intrastate telemarketing.<sup>9</sup> Pursuant to the TCPA, the FCC in 1992

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<sup>3</sup> 15 U.S.C. § 45(a).

<sup>4</sup> 16 CFR Part 310.

<sup>5</sup> See fn.2, *supra*.

<sup>6</sup> Pub. L. No. 102-243, §§ 2(4), 2(5), 105 Stat. 2394 (1991). See 47 U.S.C. § 227 notes.

<sup>7</sup> *Id.*

<sup>8</sup> H.R. Rep. 102-317 (1991), at 10.

<sup>9</sup> See generally 47 U.S.C. § 227. Beyond empowering the FCC and the state Attorneys General to enforce the statute, see 47 U.S.C. § 227(f)(1), (3), the TCPA creates a private right of action. This right of action allows individuals to seek injunctive relief and damages if they have "received more than one telephone

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promulgated rules, including the “entity-specific” Do Not Call Rule, that allows consumers to tell particular sellers and their telemarketers to stop calling.<sup>10</sup>

To further address issues related to deceptive and abusive telemarketing, Congress passed the Telemarketing Consumer Fraud and Abuse Prevention Act<sup>11</sup> (the “Telemarketing Act”) in 1994. In the Telemarketing Act, Congress authorized the FTC to adopt rules “prohibiting ... abusive telemarketing acts or practices,” including any “pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer’s right to privacy.”<sup>12</sup> Pursuant to this authority, the FTC promulgated the TSR in 1995. The TSR, as originally promulgated, also contained an entity-specific Do Not Call Rule.

In 2000, the FTC began a formal proceeding to review the effectiveness of the TSR. Consumer comments submitted during that review overwhelmingly sounded the theme that the entity-specific Do Not Call regime was inadequate to protect privacy and stop the intrusion of unwanted sales calls.<sup>13</sup> Accordingly, the FTC amended the TSR in 2003 to create a nationwide Do Not Call Rule that allowed consumers to list their personal telephone numbers on the national Do Not Call Registry and required sellers and telemarketers to remove these registered numbers from their call lists.

At about the same time, the FCC undertook to amend its TCPA-related rules to better harmonize them with the FTC’s national Do Not Call Rule and to utilize the new Registry.<sup>14</sup> The FTC and the FCC’s Do Not Call Rules prohibit sellers and marketers

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call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection.” 47 U.S.C. § 227(c)(5). *See also* 47 U.S.C. § 227(b)(3) (creating private right of action for violation of restrictions on use of automated telephone equipment).

<sup>10</sup> 47 CFR § 64.1200.

<sup>11</sup> 15 U.S.C. §§ 6101-6108.

<sup>12</sup> 15 U.S.C. §§ 6102(a)(1), (a)(3)(A).

<sup>13</sup> Consumer comments criticized the then-existing rule’s ineffectiveness because: the entity-specific approach required them to repeat their “do-not-call” request with each and every telemarketer that called; telemarketers routinely ignored their repeated requests to be placed on a “do-not-call” list; they had no way to verify whether their names had been taken off a company’s call list; and attempting to vindicate privacy rights through the TCPA’s private right of action was a complex, time consuming process that placed an excessive evidentiary burden on the consumer to keep detailed lists of who called and too often failed to result in an enforceable judgment.

<sup>14</sup> Similarly, both the FTC and the FCC’s telemarketing rules prohibit the use of artificial or prerecorded voices to deliver telephone solicitations (“robocalls”) without the prior consent of the called party. 16 CFR § 310.4(b)(1)(v), 47 CFR § 64.1200(a)(2). Both agencies have taken recent action to ensure that their approach to robocalls remains effective and consistent. *See* <http://www.ftc.gov/os/fedreg/2008/august/080829tsr.pdf> and [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-18A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-18A1.pdf).

from calling numbers on the Registry (or employing robocalls) unless they can demonstrate either that they comply with the safe-harbor provisions or that their calls fall within the “established business relationship” or “prior consent” exceptions. Both Rules impose liability on sellers and marketers who fail to fulfill those legal obligations.<sup>15</sup> The Do Not Call Rules and the other complementary privacy-protecting provisions of both the FTC and the FCC’s regulatory regimes advance substantial government interests of protecting the privacy of individuals in their homes and protecting consumers against the risk of fraudulent and abusive solicitations.<sup>16</sup>

The FTC takes seriously its responsibility to enforce the TSR to protect consumer privacy and protect consumers against deceptive and unfair telemarketing practices. Since the National Do Not Call Registry was established in 2003, the FTC has filed 59 law enforcement actions alleging Do Not Call violations.<sup>17</sup> Twenty-eight of those cases focused exclusively on violations of the Do Not Call and related privacy protection provisions of the TSR (as opposed to other provisions of the TSR which prohibit, among other activities, abusive and deceptive acts and practices). Virtually all of the Commission’s TSR enforcement actions result in permanent injunctions that prohibit defendants’ deceptive or abusive marketing or sales practices and in some cases ban defendants entirely from telemarketing. Overall, the FTC’s TSR enforcement actions have resulted in orders providing for more than \$540 million in consumer restitution or disgorgement of funds to the United States Treasury. In addition, through cases filed on its behalf by DOJ,<sup>18</sup> the FTC has obtained civil penalty orders and equitable monetary relief totaling nearly \$31 million since 2003.

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<sup>15</sup> See 47 CFR § 64.1200(c)(2) and 16 CFR § 310.4(b)(3). See also *Report to Congress Pursuant to the Do Not Call Implementation Act on Regulatory Coordination in Federal Telemarketing Laws* at 1 (2003) (noting that the FTC and the FCC’s Do Not Call Rules are largely the same) (available at <http://www.ftc.gov/os/2003/09/dnciareport.pdf>).

<sup>16</sup> See, e.g., *Mainstream Marketing Servs., Inc. v. FTC*, 358 F.3d 1228, 1237 (10th Cir.), cert. denied, 534 U.S. 812 (2004) (“The government asserts that the do-not-call regulations are justified by its interests in 1) protecting the privacy of individuals in their homes, and 2) protecting consumers against the risk of fraudulent and abusive solicitation. See 68 Fed.Reg. 44144; 68 Fed.Reg. at 4635. Both of these justifications are undisputedly substantial governmental interests.”).

<sup>17</sup> The FTC has an extensive record of robust law enforcement against fraudulent and abusive telemarketers. Since promulgation of the original TSR in 1995, the FTC has brought more than 300 cases aimed at halting various telemarketing frauds. The Commission’s anti-fraud TSR enforcement has targeted unauthorized debiting of consumers’ financial accounts and deceptive sales of various goods and services (e.g., work-at-home scams, advance-fee credit frauds, bogus government grant schemes, sweepstakes and prize promotions). Prior to the enactment of the TSR, the FTC brought 110 telemarketing cases pursuant to Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a).

<sup>18</sup> Civil penalty actions are filed by the United States Department of Justice on behalf of the FTC. In general, under the FTC Act, the FTC must notify the Attorney General of its intention to commence, defend, or intervene in any civil penalty action under the Act. 15 U.S.C. § 56(a)(1). DOJ then has 45 days, from the date of the receipt of notification by the Attorney General, in which to commence, defend or

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As both agencies have recognized, uniform application of the Do Not Call Rules is beneficial to consumers and businesses alike. Accordingly, the FTC recommends that the FCC ensure that its approach to telemarketing enforcement remains consistent with the FTC's longstanding approach. Conformity in this regard is essential to promote key law enforcement goals and to effectuate Congress's mandate to create a federal standard for protecting consumers' privacy.

### *Analysis*

The first question posed by the FCC's Public Notice asks whether, under the TCPA, a call placed by an entity that markets the seller's goods or services qualifies as a call made on behalf of, and initiated by, the seller, even if the seller does not make the telephone call. To comport with FCC precedent and to ensure that law enforcement approaches to combat telemarketing violations under TCPA parallel those under the Telemarketing Act, the answer to this question should be yes. To reach any other conclusion would thwart Congress's goals in passing legislation to combat telemarketing abuses.

FCC precedent establishes that an entity can be liable under the TCPA for a call made on its behalf even if the entity did not itself place the call. In 1995, the FCC stated in a Memorandum Opinion and Order (the "1995 Order") that "rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations."<sup>19</sup> Thus, as the FCC has explained, "[c]alls placed by an agent of a telemarketer are treated as if the telemarketer itself placed the call."<sup>20</sup> The FCC's interpretation of its rules in the 1995 Order – that, for an entity to be liable for calls it did not place, the calls must have been placed "on behalf of" the entity – is consistent with the language of the TCPA, 47 U.S.C. § 227(c)(5), which establishes the private right of action for persons who have received more than one unlawful telemarketing call "by or on behalf of" the same entity. Thus, under those circumstances, the entity is properly deemed to have initiated the call through the person or entity that actually placed the call.

Subsequent FCC precedent confirms this interpretation. In a 2005 declaratory ruling that addressed telemarketing calls made by agents on behalf of an insurance company, the FCC "t[ook] th[e] opportunity to reiterate that a company on whose behalf a telephone solicitation is made bears the responsibility for any violation of our

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intervene in the suit. *Id.* If DOJ does not act within the 45-day period, the FTC may file the case in its own name, using its own attorneys. *Id.*

<sup>19</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12397 ¶ 13 (1995).

<sup>20</sup> *Id.*

telemarketing rules and calls placed by a third party on behalf of that company are treated as if the company itself placed the call.”<sup>21</sup> And, reflecting a similar understanding of the TCPA, the FCC has approved consent decrees that concluded investigations into possible TCPA violations by entities on whose behalf third-party telemarketers made allegedly unlawful calls.<sup>22</sup> Thus, in response to the Public Notice’s first question, it is clear that an entity may be held liable under the TCPA and the FCC’s regulations for calls made on its behalf, even though the entity did not itself place those calls.

Similarly, the FTC has consistently maintained that sellers are responsible for their marketers’ telephone calls to solicit purchases of the seller’s goods or services. Although the TSR uses the verb “cause” rather than “initiate,” the FTC’s approach to protecting consumers’ privacy is the same: a seller cannot escape liability for the telemarketing violations of its marketer. In its cases against DirecTV and ADT Security Services, for example, the FTC alleged that both sellers were responsible for the violations of their authorized dealers.<sup>23</sup> As then-Chairman Majoras noted in connection with the DirecTV settlement, “This multimillion dollar penalty drives home a simple point: Sellers are on the hook for calls placed on their behalf. The Do Not Call Rule applies to all players in the marketing chain, including retailers and their telemarketers.”<sup>24</sup>

The U.S. District Court for the Central District of Illinois has reached a similar conclusion in the *DISH Network* case. In denying DISH Network’s motion to dismiss, the court held that no formal principal-agent relationship was necessary to impose TCPA liability on DISH Network.<sup>25</sup> Rather, it was sufficient if DISH retailers “acted as DISH Network’s representatives, or for the benefit of DISH Network.”<sup>26</sup>

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<sup>21</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling, Declaratory Ruling*, 20 FCC Rcd 13664, 13667 ¶ 7 (2005) (citing 1995 Order ¶ 13).

<sup>22</sup> See, e.g., *In the Matter of T-Mobile, USA, Inc.*, Order, 20 FCC Rcd 18272 (2005); *In the Matter of NOS Communications, Inc.*, Order, 22 FCC Rcd 19396 (2007).

<sup>23</sup> See *United States v. DirecTV*, Case No. 8:05-cv-01211 (C.D. Cal. complaint filed Dec. 14, 2005) (FTC matter no. 042-3039), press release available at <http://www.ftc.gov/opa/2005/12/directv.shtm>; and *United States v. ADT Security Services, Inc.*, Case No. 9:07-cv-81051 (S.D. Fla. complaint filed Nov. 6, 2007) (FTC matter no. 042-3091), press release available at <http://www.ftc.gov/opa/2007/11/dncpress.shtm>.

<sup>24</sup> See <http://www.ftc.gov/opa/2005/12/directv.shtm>.

<sup>25</sup> See fn.2, *supra*.

<sup>26</sup> *United States v. DISH Network, LLC*, 667 F. Supp. 2d 952, 963 (C.D. Ill. 2009), *certification of interlocutory appeal denied*, No. 09-3073, 2010 WL 376774, 2010 U.S. Dist. LEXIS 8957 (C.D. Ill. Feb. 4, 2010). A finding that liability can extend to sellers for their marketers’ telemarketing violations, however, does not end the inquiry. Both the FCC and the FTC’s telemarketing rules contain a “safe-harbor” provision. See 47 CFR § 64.1200(c)(2) and 16 CFR § 310.4(b)(3). A seller or marketer may avoid liability if it can show that it complies with the safe-harbor provisions.

The FCC's Public Notice also seeks comment on the question: "What should determine whether a telemarketing call is made 'on behalf of' a seller, thus triggering liability for the seller under the TCPA? Should federal common law agency principles apply? What, if any, other principles could be used to define 'on behalf of' liability for a seller under the TCPA?"<sup>27</sup>

The FTC believes that the term "on behalf of" as used in the TCPA and the FCC's TCPA regulations is clear and unambiguous. As the Supreme Court has said, "absent sufficient indication to the contrary, Congress intends the words in its enactments to carry 'their ordinary, contemporary, common meaning.'"<sup>28</sup> Similarly, if an undefined term in a regulation is clear and unambiguous, it is applied according to its plain meaning.<sup>29</sup> Accordingly, the term "on behalf of" should be accorded its common meaning.

The common meaning of "on behalf of" is "in the interest of"<sup>30</sup> or "as a representative of" or "for the benefit of."<sup>31</sup> This definition is plain and unambiguous.<sup>32</sup> A solicitation is therefore "on behalf of" an entity if it is in the entity's "interest," in its "aid," or for its "benefit." There is no requirement that the person making the solicitation be the entity's "agent." Thus, the issue of whether the marketer's efforts are "on behalf of" the seller, which efforts might have triggered a TCPA violation, turns upon whether the marketer's solicitations are in the seller's "interest" or "aid" or for the seller's "benefit."

Importantly, this common definition also ensures that sellers will not be rewarded for turning a blind eye to those who market sellers' goods or services and whose marketing efforts inure to sellers' benefit. The seller alone is in the best position to monitor the manner in which its products are marketed because it knows who is marketing and because it benefits most substantially from those marketing activities. A seller's simple ploy of creating and maintaining an attenuated relationship with the marketer that induces sales of the seller's products – and creates a revenue stream

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<sup>27</sup> The Sixth Circuit Court of Appeals noted in *Charvat v. EchoStar Satellite, LLC*, that the FCC has not defined the term "on behalf of" with respect to the TCPA and its related rules and that the FCC supported referral of the issue under the "primary jurisdiction" doctrine. 630 F.3d 459, 465-468 (6th Cir. 2010).

<sup>28</sup> *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993), citing *Perrin v. United States*, 444 U.S. 37, 42 (1979).

<sup>29</sup> *Christensen v. Harris County*, 529 U.S. 576, 588 (2000); *Paragon Health Network, Inc. v. Thompson*, 251 F.3d 1141, 1145 (7th Cir. 2001).

<sup>30</sup> *Merriam-Webster's Collegiate Dictionary* 103 (10th ed. 1999).

<sup>31</sup> *Webster's Third New International Dictionary* 198 (2002). See also *United States v. Frazier*, 53 F.3d 1105, 1112 (10th Cir. 1995); *Craven v. United States*, 215 F.3d 1201, 1207 (11th Cir. 2000).

<sup>32</sup> *Madden v. Cowen & Co.*, 556 F.3d 786, 796-97 (9th Cir. 2009).

running directly to the seller – should not insulate that seller from liability for invading consumers’ privacy rights under the TCPA.

Indeed, a narrower interpretation of “on behalf of” would result in a variety of scenarios that could completely subvert Congress’s privacy-protection goals. For example, unless a seller in the United States bears responsibility and liability for calls placed on its behalf, it would have a strong incentive to set up an attenuated marketing structure involving entities marketing from overseas to U.S. citizens, possibly offering deeply discounted services because they can avoid the cost of subscribing to the Registry and scrubbing their call lists. Because these overseas marketers would not be within ready reach of United States law enforcement, the seller – who enjoys virtually all of the benefit generated by the calls – must be liable to foreclose the opportunity to circumvent the Do Not Call Rules.

Similarly, in the case of entity-specific Do Not Call Rules, it would be unworkable to hold only the marketer liable for violations. A marketer could commit telemarketing violations wholly based on the seller’s wrongdoing and an overly-restrictive interpretation of “on behalf of” could absolve the seller, even if the fault for the violations lies at the seller’s door. Suppose, for example, that a seller engages Company A to market the seller’s products. Because Company A interfaces with recipients of the earlier telemarketing calls, Company A controls the intake point for consumers’ entity-specific Do Not Call requests, and Company A should see to it that the information necessary to effectuate those requests is recorded and compiled into an entity-specific Do Not Call list. Now suppose that the seller terminates its relationship with Company A and engages Company B to market the seller’s products. If the seller does not ensure that Company A’s entity-specific Do Not Call list gets transferred to Company B (or to the seller’s other marketers), the seller and Company B will proceed as though none of the consumers who told Company A to stop calling had asserted their entity-specific Do Not Call rights. In such a case, Company B could very likely violate the entity-specific Do Not Call Rules by placing calls to the seller’s customers who had asked not to be called. Under these circumstances, if an overly-restrictive definition of “on behalf of” were used, only Company B would be breaking the law even though the seller was the bad actor who should be held responsible.

Law enforcement efforts would also be thwarted if the government were required to sue each marketer separately rather than bring an action against the ultimate seller. Sellers may have thousands of “independent” marketers, and suing one or a few of them is unlikely to make a substantive difference for consumer privacy. Another marketer can simply spring up in its place and violate the law. Also, in a large network of marketers, it can be difficult and inefficient for the government to identify which marketers are violating the law. Sellers instead are in the best position to monitor and enforce compliance of their own marketers. Any other approach would amount to a game of “whack a mole,” in which the FTC or FCC would sue a marketer



or group of marketers, but the overall number of Do Not Call violations would not decrease.

The FTC and states have sought to stop invasions of consumers' privacy in the litigation against DISH Network, LLC, and in prior enforcement actions against other sellers who operate through similar networks of purportedly "independent" marketers. By interpreting "on behalf of" to hold sellers liable for marketers' violative telephone calls made to market the sellers' goods or services, the FCC's approach will be consistent with current law-enforcement efforts and will effectuate Congress's consumer-protection goals.

As the Tenth Circuit Court of Appeals wrote when it upheld the national Do Not Call Rules in 2004:

The national do-not-call registry offers consumers a tool with which they can protect their homes against intrusions that Congress has determined to be particularly invasive. Just as a consumer can avoid door-to-door peddlers by placing a "No Solicitation" sign in his or her front yard, the do-not-call registry lets consumers avoid unwanted sales pitches that invade the home via telephone, if they choose to do so.<sup>33</sup>

A comprehensive interpretation of "on behalf of" will have at least two beneficial effects to further Congress's goal. First, it will effectuate consumers' desire to protect their privacy and avoid telemarketing calls by encouraging sellers to oversee how their goods and services are marketed. If sellers know that they will face liability for telemarketing violations made on sellers' behalf, sellers will be much more likely to heed consumers' telemarketing complaints and discipline the marketers whose activities generate those complaints. Second, it will help to ensure that the FTC and the FCC can effectively protect consumers' privacy by holding both sellers and their marketers liable for violations of Do Not Call and Robocall Rules. A clear and comprehensive interpretation of "on behalf of" is critical for effective TCPA enforcement.

To rely on federal common-law precedents based on agency and/or joint-venture principles would be to import into the TCPA standards that have no place in this statutory cause of action. Indeed, there is no basis for adopting a standard incorporating common law agency principles, such as inquiry into the principal's control over the purported agent's activities. Neither the TCPA nor 47 CFR § 64.1200 contains any reference to these common-law standards. If Congress had intended for common law standards to determine an entity's liability for violating the TCPA, it could

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<sup>33</sup> *Mainstream Marketing Servs., Inc. v. FTC*, 358 F.3d 1228, 1233 (10th Cir.), *cert. denied*, 534 U.S. 812 (2004).

easily have omitted the “on behalf of” phrase and defined how “agents” could expose their “principals” or how “joint venturers” could expose each other to such liability. Similarly, in promulgating rules pursuant to the TCPA, there would have been little reason for the FCC to spell out a detailed safe harbor, such as that found in 47 CFR § 64.1200(c)(2), if federal common-law principles already limited who might be liable. Limiting the reach of TCPA liability by applying such principles would be contrary to the statute’s broad consumer-protection and privacy goals.

### *Conclusion*

The FTC is pleased to share its experience in enforcing consumer protection laws and rules governing telemarketing and to assist the FCC in crafting policies to help protect Americans’ privacy and to safeguard consumers from unfair and deceptive telemarketing practices.