

April 15, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Telemarketing Rulemaking – Comment; FTC File No. R411001

Comcast Corporation (“Comcast”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Trade Commission (“Commission” or “FTC”) regarding the Telemarketing Sales Rule (“Rule”). Comcast supports the FTC’s efforts to protect consumers from fraudulent and deceptive telemarketing practices. However, Comcast believes that certain proposed changes to the Rule would unreasonably interfere with Comcast’s ability to communicate with consumers in an efficient and effective manner, thereby restricting ongoing regular communications and reducing convenience for its customers. Comcast joins, therefore, in the comments of the National Cable and Telecommunications Association, and, in addition, separately submits these comments in order to emphasize the manner in which the proposed changes to the Rule would uniquely affect multiple cable system operators such as Comcast.

Founded in 1963, Comcast has a demonstrated history of leadership in the media and communications industries, and is currently the nation’s third largest cable operator, serving approximately 8.5 million subscribers. Upon the closing of the planned combination of Comcast’s cable operations with the cable operations of AT&T Broadband Corp., which is anticipated to occur by the end of this year, the combined company will be the largest cable operator in the country, serving approximately 22 million subscribers. Comcast’s other significant businesses include the QVC cable shopping channel, Comcast Spectacor (which owns the Philadelphia 76ers and Philadelphia Flyers professional sports franchises), Comcast SportsNet, E! Entertainment Television, the Golf Channel, and the Outdoor Life Network.

Comcast attributes much of its success to the high-quality customer service it provides, including through telemarketing services used to acquire, maintain, and strengthen its relationships with customers and potential customers. Most customers can contact Comcast via telephone and speak with a live customer service representative 24 hours a day, 7 days a week, 365 days a year. Given its extensive telemarketing operations, Comcast is very concerned about

certain proposed changes to the Rule that potentially would interfere with its ability to effectively and conveniently serve its customers. As a result, Comcast respectfully urges the FTC to address the following concerns in connection with NPRM:

- Provide an Exemption for Calls to Persons with whom the Seller has an Established Business Relationship.

While Comcast supports the Commission's goal of enabling consumers to control their own privacy preferences through the creation of a national do-not-call registry, the absence of an established business relationship exemption under the proposed Rule actually would restrict consumer choices and significantly interfere with Comcast's ability to conveniently inform customers of service offerings and choices that best meet their needs. Comcast has gone to great lengths, and made enormous capital investments, to offer an expanding array of advanced video and data services, including interactive programming guides, multiple channels of digital music, pay-per-view and video-on-demand services, high-speed cable modem Internet access, and cable telephony. Comcast offers digital cable television services in substantially all of its cable systems and high-speed Internet service in approximately 75% of its systems. Comcast's customers have been extremely receptive to these offerings, adopting these advanced services at a very high rate. For example, subscriptions to broadband Internet services, which are critical to the continued growth of the Internet economy, have surged in recent years. The efficient and effective use of telemarketing to inform consumers of the availability and advantages of high-speed Internet access and other digital cable services will be central to further growth.

Unlike print or telecast promotions, telemarketing allows consumers to interact with Comcast's customer service representatives, who can better explain the features of Comcast's suite of advanced services and tailor choices to meet the needs of individual consumers. The proposed national do-not-call registry would inhibit Comcast's ability to contact prospective customers as it rolls out new service offerings or expands the reach of its cable franchises. Moreover, the national do-not-call registry would make it more difficult for Comcast to tell even its existing customers about new service offerings that they are likely to find of interest. Although the NPRM contemplates that the proposed national do-not-call registry will allow consumers to selectively designate companies from which they are willing to receive telemarketing calls, the mode of operation of the planned do-not-call registry described in public statements by FTC representatives would not allow consumers to make such choices. In the absence of an established business relationship exception, therefore, consumers are likely to place their names on the national do-not-call list without understanding that doing so will preclude them from receiving calls from companies they know and trust.

Outbound telemarketing has proven critically important to Comcast's successful deployment of digital video and broadband services. Targeted telemarketing campaigns timed with the roll out of system upgrades in particular communities have proven effective and convenient for customers. The high adoption rates associated with telemarketing of new service offerings indicate that consumers receive tangible benefits from receiving calls from companies they know and trust. Telemarketing is among the fastest means of informing consumers when

new services become available in their neighborhoods. For these reasons, the proposed adoption of a do-not-call registry without the creation of an established business relationship exception unnecessarily restricts valuable marketing communications.

Under the current Rule, companies already are required to refrain from telemarketing to customers who have indicated that they do not wish to receive such calls. In addition, absent a prior do-not-call request, there is no evidence to suggest that telemarketing calls to existing customers unreasonably invade consumer privacy. As a result, the Commission should follow the lead of the Federal Communications Commission and virtually every state legislature that has enacted do-not-call laws by creating an exemption for telemarketing calls to consumers with whom the seller has an established business relationship.

- Revise the Definition of an “Outbound Telephone Call” so that: (a) “Up-Selling” of a Company’s own Products and Services, as well as those of its Affiliates, is Excluded from the Definition; and (b) Inbound Telephone Calls are only Subject to the Disclosure Requirements of the Rule.

The Commission’s proposed definition of an “outbound telephone call” would subject inbound telephone calls to the Rule when: (i) a customer is transferred from one telemarketer to another; or (ii) a single telemarketer promotes the products and services of two separate organizations. Comcast urges the Commission to clarify that this proposed definition is not intended to apply to calls transferred between telemarketers representing the same seller. In addition, as currently drafted, the proposal would subject “up-selling” solicitations to calling hour requirements, national do-not-call obligations, and other requirements that logically should not apply to customer-initiated calls.

The Commission’s proposed definition of an “outbound telephone call” would essentially transform the “up-selling” portion of inbound calls into a separate, outbound telemarketing call, fully subject to the proposed Rule, including the calling hour and do-not-call restrictions. This change would lead to incongruous results, such as requiring a Comcast representative receiving an inbound call to determine in “real time” whether the caller’s name or number is on the proposed national do-not-call registry and to consider whether a second solicitation, if any, would take place before 8 a.m. or after 9 p.m. In addition, the proposed definition could subject the “up-selling” of products and services offered by subsidiaries and other affiliated entities to all of the requirements of the Rule. Accordingly, Comcast encourages the Commission to limit the proposed definition to its intended purpose of imposing only the Rule’s disclosure obligations on telemarketers who engage in “up-selling” of unrelated third-party products and services during inbound telephone calls.

- Modify the Restriction on Information Sharing to Clarify that a Customer’s Billing Information may be Transferred Between a Seller and its own Sales Agents.

The FTC’s proposed restrictions on the disclosure of customer billing information could prohibit telemarketers from receiving a customer’s billing information from anyone other than the customer, or from sharing any such information with third-party telemarketers. It is a common practice, however, for companies to engage the services of third-party agents to perform telemarketing activities. When such third parties acquire a new customer on behalf of Comcast, they necessarily transfer the customer’s billing information back to Comcast for purposes of enabling Comcast to service the new account.

The proposed amended Rule could prevent Comcast from receiving customer billing information acquired by its own contractors or third-party sales agents. The FTC should clarify that this limitation was not the intended result of the proposed restrictions. Whether the billing information in question is obtained through a transaction conducted by a third-party sales agent or by a seller’s own call center employees, a seller’s internal use of this information does not pose significant risks to consumer privacy. Consumers who already have purchased goods or services through telemarketing are on notice that the seller possesses their account information at the time they are solicited. As such, these customers will not be surprised when the seller uses the billing information that they voluntarily have provided to process subsequent transactions.

Comcast recommends, therefore, that the Commission clarify that the proposed Rule would permit transfers of customer billing information between a seller and its sales agents promoting the seller’s own products and services. Specifically, the FTC should permit the exchange of customer billing information where: (a) the consumer provided the information in order to receive the seller’s own products and services; and (b) the subsequent use of such information is used only in connection with the same seller’s products and services.

- Only Adopt Caller-ID Proposals that Prohibit Intentionally Suppressing Caller-ID Information.

Comcast supports the FTC’s proposal in the NPRM that would make it a violation of the Rule to intentionally falsify or block caller-ID information. However, to the extent that such a proposal is reflected in the final Rule, Comcast requests that the FTC clarify that the use of equipment and services that do not support the transmission of caller-ID information will not violate the proposed Rule. Technological limitations make it impractical to require that caller-ID information be transmitted in all cases. Rather, only those telemarketers that take affirmative steps to falsify or block the transmission of caller-ID information should be considered to be engaging in deceptive practices.

- Address Practical Limitations in Implementing a National Do-Not-Call Registry and Require Consumers to Update their Listings Annually.

The implementation of a national do-not-call registry will impose substantial costs on the marketing activities of legitimate businesses. In addition, the proper implementation of a national do-not-call registry raises a number of practical concerns. For example, under the proposed Rule, it may be necessary to suppress both the names and telephone numbers of “persons” appearing on the national do-not-call registry – and “persons” are in turn defined to include natural persons as well as corporations and other business entities. This formulation is inconsistent with the scope of the Rule, which generally exempts from its coverage telemarketing calls to “any business.” In addition, according to the Direct Marketing Association, telephone numbers for 16% of the population change every year. As a result, in order to prevent the national do-not-call list from becoming obsolete, listings in the proposed do-not-call registry should be retained for no longer than twelve months from the date of initial registration, or any subsequent renewal. Finally, in the event that the FTC decides to implement a national do-not-call registry, it should be mindful of the burdens placed on businesses in complying with the obligation to comply with the national do-not-call requirements, as well as those of the approximately twenty states that have implemented analogous do-not-call laws. In particular, the Commission should seek to promote uniformity among the format and use of such lists, and ideally should require or encourage states to allow companies to comply with state do-not-call laws through compliance with the national do-not-call requirements.

- Eliminating the Business-to-Business Exemption for Providers of Web and Internet Services Unreasonably Restricts Valuable Commercial Speech and Unfairly Discriminates Against Companies that are Subject to the FTC’s Jurisdiction

Comcast, through an affiliate, engages in telemarketing to promote its business services, which include Internet connectivity solutions and networked business applications. While the NPRM generally maintains the current Rule’s exemption for business-to-business transactions, the proposed Rule would render providers of Web and Internet services ineligible for this exemption. The NPRM describes this proposal as necessary to combat the “leading source[] of complaints about fraud by small businesses,” yet cites only four cases of fraudulent Web services and no cases of fraudulent Internet services. Moreover, because these services are broadly defined, this proposal would restrict substantial amounts of legitimate, truthful, and constitutionally-protected commercial speech.

The elimination of the business-to-business exemption for sellers of Web and Internet services would unfairly discriminate against these providers and place them at a distinct competitive disadvantage. Because of limitations on the FTC’s jurisdiction, common carriers and other Comcast competitors would not be subject to the Rule and its restrictions. As a result, Comcast opposes the Commission’s elimination of the exemption for providers of Web and Internet services. If the FTC ultimately decides to limit the business exemption, it should target only the “cramming” practices involving Web services that were the subject of the enforcement actions described in the NPRM.

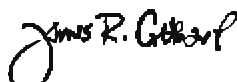
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Comcast appreciates the opportunity to submit these comments and hopes that the Commission will strike the appropriate balance between protecting consumers' legitimate privacy interests and addressing the legitimate business concerns of companies that engage in valuable telemarketing activities.

Sincerely,

A handwritten signature in black ink that reads "James R. Coltharp". The signature is written in a cursive style with a large initial "J".

James R. Coltharp
Senior Director, Public Policy