BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: **Regulation of Certain Telemarketing Practices; Don't Call List**

Docket No. 99-00645

JOINT COMMENTS

The following members of the Tennessee Telecommunications Association respectfully submit these Joint Comments to the Tennessee Regulatory Authority's ("TRA's") Proposed Rules[1] entitled "Regulations of Certain Telemarketing Practices":

Ardmore Telephone Company
BellSouth Telecommunications, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
CenturyTel of Adamsville
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Citizens Communications
Concord Telephone Exchange (TDS)
Crockett Telephone Company, Inc.
DTC Communications
Humphrey's County Telephone Company (TDS)
Loretto Telephone Company
NEXTLINK
North Central Telephone Cooperative
People's Telephone Company, Inc.
Sprint
Tellico Telephone Company (TDS)
Tennessee Telephone Company (TDS)
United Telephone Company
West Tennessee Telephone Company

Although each of these entities reserves the right to file additional comments supplementing these joint comments and addressing aspects of the Proposed Rules that are not addressed in this filing, these

[1] The text of these Proposed Rules appeared in the September 15, 1999 volume of the *Tennessee Administrative Register*.

entities share the following concerns, and we strongly urge the Authority to amend the proposed rules to address these concerns:

> We object to portions of the Proposed Rules which require certain service providers to police the activities of their subscribers.
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> We object to portions of the Proposed Rules which unfairly place these service providers in the role of prosecutor, judge, and jury with regard to the legality of a subscriber's proposed use of certain services.
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> We object to portions of the proposed rules which prohibit telephone solicitors from purchasing and service providers from providing telephone equipment or network elements that can block the Caller ID service of a subscriber. As explained below, this blanket prohibition is improper because there are many situations in which a telephone solicitor is not prohibited from blocking the Caller ID function.
>
> We object to portions of the proposed rules that require certain service providers to print and distribute application forms for enrollment on the "Do Not Call" list. As explained below, this is a very costly and ineffective proposition, and there is no provision for the recovery of the costs associated with the printing and distribution of applications.

These objections are explained in more detail in the following discussion.

I. Proposed Rule 1220-4-11-.02(5)

For the reasons explained below, we recommend amending Proposed Rule 1220-4-11-.02(5) to read as follows:

> Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block the caller ID function on the telephone number of a residential subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.

This revision is necessary for several reasons. First, section 3 of Public Chapter 478 ("the Act") only prohibits telephone solicitors from "knowingly utilizing any method to block or otherwise circumvent" the caller identification service of a "residential subscriber in this State" to whom the telephone solicitor is placing a telephone solicitation. *See* Public Chapter 478, SECTION 3 (emphasis added). The Act does not prohibit a telephone solicitor from blocking the caller ID function of any person who

is not a residential subscriber or who is not being solicited. Thus while a telephone solicitor may not block the caller ID function when calling a residential number to make a telephone solicitation, the same solicitor may block the caller ID function when using the same telephone to call a business or to call a residential number for purposes other than solicitation (i.e. for checking on the status of a late payment). By purporting to prohibit any "telemarketing company" from blocking the caller ID function on any call it places, the proposed rule clearly is in conflict with the Act upon which it is based. The TRA, therefore, should amend the proposed rule to reflect the more narrow prohibitions set forth in the Act.

II. Proposed Rule 1220-4-11-.02(6)

For similar reasons, we recommend eliminating Rule 1220-4-11-.02(6) in its entirety. As noted above, there are many situations in which the Act does not prohibit a telephone solicitor from blocking the caller ID function. A telephone solicitor, therefore, may legitimately purchase network services that allow caller ID blocking, and there is no statutory authority for a rule purporting to prohibit local exchange companies and interexchange carriers from providing such services. Moreover, the Proposed Rule conflicts with FCC orders requiring LECs to provide caller ID blocking capability to all subscribers. Finally, the Proposed Rule impermissibly requires local exchange companies and interexchange carriers to "police" the activities of their subscribers to determine whether a given subscriber is a "telemarketing company" and, if so, whether the network elements purchased by that subscriber "would block the display of the telemarketer's name and telephone number on the called party's caller ID equipment." This "policing" requirement is not only impermissible, but it is also unduly burdensome, if not impossible, to administer.

III. Proposed Rule 1220-4-11-.02(7)

We recommend amending Rule 1220-4-11-.02(7) to read as follows:

> Upon order of the Authority, a local exchange company or interexchange carrier shall disconnect local exchange service and/or toll service to any customer who uses an ADAD in violation of state law or this Rule Chapter.

As written, the proposed Rule would require a carrier to police its customers' use of its services and to make a determination as to the legality of that use. Additionally, placing a carrier in the position of prosecutor, judge, and jury potentially subjects the LEC or the IXC to liability if a court or the TRA disagrees with its determination of the legality of its customers' use of such services.

IV. Proposed Rule 1220-4-11-.13

We recommend amending Rule 1220-4-11-.13 to read as follows:

> (1) Local exchange companies are required to inform their residential subscribers once a year of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations. This notification shall appear as a bill message or otherwise accompany the subscribers' monthly telephone bill.
>
> (2) In addition to the notification required by subsection (1), local exchange carriers, working in cooperation with the division, are required to place information in their White Page telephone directory informing their residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations.

The Act requires a local exchange company "to semi-annually inform its residential subscribers of the opportunity to provide notification to the authority or its contractor that such subscriber objects to receiving telephone solicitations," *See* Public Chapter No. 478, SECTION 5(b)(1)(emphasis added), and we do not object to informing customers of the opportunity to enroll in the database by way of the White Pages directory and by way of a bill message. We also suggest that the TRA establish an application form on its TRA web page and that the TRA urge other appropriate state agencies to establish prominent links to this application form on their web pages.

Nothing in the Act, however, requires telephone solicitors or independent telephone solicitor contractors to inform subscribers of how to enroll in the database or to provide applications for such enrollment as required by the Proposed Rules. Nor does the Act require local exchange companies to incur the expenses associated with printing application forms in directories and bill inserts, especially without being compensated for the costs of printing and distributing such application forms. As indicated by the experience some industry members have had in the state of Georgia, such an approach is both costly and inefficient.

For example, on a one-time basis, BellSouth provided for the printing of a *Special Notice on Telephone Solicitations* in directories across the state of Georgia. The cost of this one-time inclusion of the application form in the directory was significant, and less than 2.5% of the applications the Georgia PSC received for inclusion in Georgia's "do not call" database were the application forms that appeared in the directory.

Additionally, BellSouth was required to send application forms to all of its Georgia subscribers in 1998 (the first year of Georgia's no-call list), and BellSouth included this application on a separate stock card in the bill. BellSouth's Georgia subscribers found this to be quite confusing, as many of those subscribers included the application forms (and the fees required by the Georgia statute) along with their BellSouth bill payment and mailed them to BellSouth instead of sending the application and fee to the Georgia PSC. It cost BellSouth approximately $600,000 to facilitate reconciliation of applications and payments to the administrator of the Georgia No Call List.

Other members of the industry had similar experiences in the state of Georgia. We, therefore, object to the requirement of providing application forms to residential customers. Past experience indicates that this approach will create significant customer confusion and unrecoverable costs.

Requiring industry members to incur these costs without being reimbursed for these costs constitutes an unconstitutional taking.

CONCLUSION

We appreciate the opportunity to present these concerns to the Tennessee Regulatory Authority, and we look forward to cooperating with the Authority in amending the proposed rules to fairly, effectively, and efficiently implement the provisions of Public Chapter No. 478.

Respectfully submitted,

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On Behalf of:

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