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November 22, 1999

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EXHIBIT

K. David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505


Re: Notice of Proposed Rulemaking to Create Rule 1220-4-11 Concerning  
Regulations of Certain Telemarketing Practices  
Docket No. 99-00645

Dear Mr. Waddell:

Attached is the original plus thirteen (13) copies of MCI WorldCom's Comments in the above-referenced docket. Should you have any questions, please give me a call.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

  
Jon E. Hastings

JEH/sja  
Attachment

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY** RECEIVED  
REGULATORY AUTH.

**NOTICE OF PROPOSED RULEMAKING  
TO CREATE RULE 1220-4-11 CONCERNING  
REGULATIONS OF CERTAIN  
TELEMARKETING PRACTICES**

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**Docket No. 99-00645**  
EXECUTIVE SECRETARY

99 NOV 22 PM 3 49

**COMMENTS OF MCI WORLDCOM RE: NOTICE OF  
RULEMAKING CHAPTER 1220-4-11, REGULATIONS OF  
CERTAIN TELEMARKETING PRACTICES**

MCI WorldCom hereby files comments in this matter regarding new rules proposed in Chapter 1220-4-11 to implement new regulations of certain telemarketing practices.

**GENERAL**

Like the Tennessee Regulatory Authority (the "Authority"), MCI WorldCom recognizes that not all consumers are interested in offers presented by telemarketers and would point out that, in compliance with federal requirements, MCI WorldCom already maintains an internal "Do Not Call" list for those consumers who have indicated they do not want to receive calls from MCI WorldCom. In recognition of the new Tennessee statutory provision (T.C.A. § 65-4-401) and of the Authority's responsibility to promulgate rules to implement this statute, MCI WorldCom offers the following comments on the Authority's proposed rules.

One important item that the proposed rules do not address is that telemarketing companies will need a period of time (such as 60-90 days) after the Authority gets its database into operation

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in which to bring themselves into compliance with these rules. The Authority will need to accept names for a period of time (perhaps one quarter -- 3 months) to compile its initial list after which telemarketers will need time to purchase the list that has been compiled and to get it up and incorporated into their internal systems. The rules ought to clarify these timeframes so that all telemarketers will have time to bring themselves into compliance.

#### **1220-4-11-.01 Definitions**

Several of the terms defined in the proposed rules are already defined by the statute (T.C.A. § 65-4-401) -- such as "Telephone solicitation." MCI WorldCom would encourage the Authority to rewrite the definitions of all terms in this section that are already defined in the statute so as to track the statutory language. This will avoid any ambiguity caused by having two different definitions for the same term.

#### **1220-4-11-.02 General Telemarketing Regulations**

(5) The Authority should limit the prohibition set forth in this item to intentional blocking of caller ID information. Certain (mostly older) equipment used by some telemarketers was designed without the capability of generating the ANI information necessary to permit the caller ID function to work. There may be other instances in which the equipment used by a telemarketer does not block the caller ID function but does not pass along ANI information as part of what it does. For example, MCI WorldCom uses its own networks to place telemarketing calls and such calls do not pass through a central switch with "Signal System 7" to initiate a transmission of ANI information. Upgrading the equipment to have the capability of sending such information is both very expensive

and is a time intensive transition. Newer equipment generally includes the capability of generating ANI information.

Telemarketers using such older systems are not intentionally blocking the sending of ANI information nor are they intentionally interfering with the workings of caller ID. The equipment used simply was not designed with caller ID in mind. MCI WorldCom would urge the Authority to limit this prohibition to telemarketers intentionally blocking caller ID information. In that way, telemarketers desiring to be in compliance with the Authority's rules can be assured of doing so regardless of the age and technical capabilities of their telemarketing equipment. As time goes on and more telemarketers upgrade their equipment, this should become less of an issue.

(6), (7) These provisions purport to prohibit local exchange carriers and interexchange carriers from providing service to telemarketers that fail to follow certain of the Authority's rules. MCI WorldCom strongly believes that LECs and IXC's are technologically and legally incapable of policing telemarketer-customers (or any other user of telephone service). LECs and IXC's should not be required by rule to police telemarketers. In addition to the sheer impossibility (technologically, legally, etc.) for LECs and IXC's to monitor telemarketers' activities, it is unreasonable to expect telecommunications service providers to police this (or any) industry. In nearly every instance, LECs and IXC's will not even be aware of a rule violation by a customer-telemarketer. Only after the Authority finds a particular telemarketer (after notice and an opportunity to be heard) to be in violation of its rules and orders might it be appropriate to order a LEC and/or IXC to cease providing service to that telemarketer in Tennessee.

**1220-4-11-.03 Authorization to Operate ADAD Equipment  
through 1220-4-11-.07 ADAD Rule Requirements**

T.C.A. § 47-18-1503 gives the Authority the authority to issue and revoke permits for the use of ADAD equipment. The statute does not, however, grant broad authority to the Authority to regulate the use of ADAD equipment. There are extensive rules already in place regarding ADAD equipment in both the Telephone Consumer Protection Act of 1991 and the FCC's rules implementing that statute (both available for review at the websites noted below).

Telephone Consumer Protection Act of 1991: <<http://www.jmls.edu/cyber/statutes/email/tcpa.html>>

*Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, CC Docket No. 92-90, 7 FCC Rcd 8752 (1992), *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, CC Docket No. 92-90, 10 FCC Rcd 12391 (1995), *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Further Reconsideration, CC Docket No. 92-90, 12 FCC Rcd 4609 (1997), FCC Regulations 47 C.F.R. § 64.1200, 47 C.F.R. § 68.318(c). :

<[http://www.fcc.gov/ccb/consumer\\_news/tcpa.html](http://www.fcc.gov/ccb/consumer_news/tcpa.html)>

Given this regulation of ADAD equipment, MCI WorldCom does not believe that additional Tennessee regulations in this area would be beneficial to consumers and such additional regulation would be burdensome on the industry. Efforts to comply with varying rules regarding ADAD equipment in different states with different federal and various state requirements are complicated to the point of impossibility by the fact that one ADAD can be used to make calls to multiple states.

MCI WorldCom does not currently use ADAD equipment for any of the uses for which the Authority's rule would require it to obtain authorization. Nonetheless, in addition to the issue of whether the Authority has the authority to regulate ADAD equipment, there are items in the Authority's proposed rules that conflict with certain of the FCC's rules in this area. MCI WorldCom

would urge the Authority to amend these proposed rules by deleting all rules pertaining to ADAD equipment other than those rules regarding registration.

(1) In this item, the Authority requires that telemarketers using ADAD equipment to solicit business or information to obtain a separate permit for each ADAD. This is unnecessary and unduly burdensome. The focus of any review by the Authority should be the company itself, rather than the hardware or software that company uses. It would be preferable for the Authority to require that each company or vendor making use of ADAD equipment for the noted purposes obtain one permit. The Authority could then require each such company to provide a list of its equipment if it desires such information.

#### **1220-4-11-.04 Application for Authorization to Operate ADAD Equipment**

(2) This provision would require that an applicant for authority to use ADAD equipment pay a filing fee as well as a registration fee. MCI WorldCom would request that the Authority include an exception to the requirement to pay these fees for entities regulated by the Authority. While it might be reasonable for unregulated telemarketers to pay such fees, regulated entities in Tennessee are already assessed annually (on their gross receipts tax) for the operations of the Authority. For this reason, it would be most appropriate for entities regulated by the Authority to be exempted from the payment of these fees.

#### **1220-4-11-.10 Maintaining The Tennessee Do Not Call Register**

(3) The Authority should qualify this rule by clarifying that it shall include the list of Tennessee subscribers to the FCC's Do Not Call database should such a database be created. With this change, the Authority's rule would be clear and the Authority's rule would track the statutory requirement.

#### **1220-4-11-.11 Telemarketers Access To The Tennessee Do Not Call Register**

(1) This paragraph states that telemarketers must pay a filing fee of \$25 to obtain the list. It is unclear what this is for or why it is necessary given that telemarketers are required by statute and in item (3) to pay an annual fee of \$500.

(2)(a) This item states that telemarketers purchasing the list will receive a list of telephone numbers of those Tennessee consumers electing to be added to the Do Not Call Register. It would be beneficial if the list included the names of customers on the Do Not Call Register as well and, as this is information the DCR Coordinator will have, it should be provided to those required to purchase the list.

(2)(b) In this item, telemarketers are held responsible for having the latest version of the database. The Authority should set forth at what intervals the database will be updated (such as quarterly). Once the database is updated, telemarketers will need a "lead time" such as 30 days, to incorporate the Authority's new list into their individual "do not call" databases. Specifying such intervals will permit the Authority to accurately inform consumers of the time lag from the time the

consumer submits his name to the list until the point at which he can reasonably expect not to be called. Additionally, specifying such intervals will permit telemarketers to plan around expected updates of the Tennessee list and will make clear how long they have to incorporate each new update.

#### **1220-4-11-.12 Consumer Registration With The Tennessee Do Not Call Register**

(e) The Authority notes here that the DCR Coordinator may purge the Register periodically in order to ensure accuracy. MCI WorldCom would urge the Authority to set a regular interval for this function. Consumers should be made aware that their number will remain in the Register for a fixed period of time -- such as two years. The Georgia No Call List (<http://www.ganocall.com/>) limits those enrolling to two years, after which time a consumer must enroll again to continue on the list. Many consumers move or otherwise change telephone numbers in a two year timeframe and purging numbers that have been in the system for two years will permit the release of such numbers. MCI WorldCom would suggest that this purging take place every two years but in no event less frequently than every five years (at which point many of the numbers on the list will have turned over to new subscribers).

#### **1220-4-11-.13 Public Education About The Tennessee Do Not Call Register**

(2) The Authority should modify this requirement by specifying that those local exchange carriers that publish a directory shall include the noted information. Most CLECs do not yet offer their own directories and cannot comply with the requirement as written.



(3) This provision purports to require telemarketers and their contractors to inform consumers of how to enroll in the Tennessee Do Not Call Register. The wording of the rule does not make clear when such information is required to be provided and is drafted so broadly that one could infer that the rules require such information to be given each time a call is placed. Clearly there should be no requirement to provide such information when it is not requested by a consumer.

There is nothing in the statute that would require telemarketers to provide information on how to enroll in the Tennessee Do Not Call Register even for those consumers requesting such information. For companies that telemarket from one or more national or large regional telemarketing centers, compliance with this rule (even if it is clarified) will be extremely difficult. T.C.A. § 65-4-405(b)(1) grants the Authority the authority to promulgate regulations requiring each LEC semi-annually to inform residential subscribers of the registration opportunity. This semi-annual information ought to be adequate to ensure that consumers interested in enrolling in the Do Not Call Register become enrolled. MCI WorldCom would submit that the statute does not contemplate the sort of notification required by this rule. Moreover, such notification would be extremely difficult for large telemarketers to provide to consumers, even upon request because telemarketers typically call multiple states. In many instances one telemarketing center might make calls to prospective customers in all fifty states and consumers can request that a particular telemarketer add that consumer to its internal Do Not Call list (the list with which each telemarketer will clearly be familiar). MCI WorldCom would urge the deletion of this proposed rule.

## CONCLUSION

MCI WorldCom appreciates the Authority's consideration of its comments regarding these proposed rules.

Respectfully submitted,

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