

not-call requirements for entities such as newspapers, magazines, regional telemarketers, or small businesses. We find unpersuasive arguments that application of the national do-not-call database adopted herein will result in severe economic consequences for these entities. In particular, we note the exemptions adopted for calls made to consumers with whom the seller has an established business relationship and those that have provided express agreement to be called. As noted, many consumers may also determine not to register on the national database. Telemarketers may continue to contact all of these consumers. We believe these exemptions provide telemarketers with a reasonable opportunity to conduct their business while balancing consumer privacy interests. Although we agree that newspapers and other entities may often provide useful information and services to the public, given our conclusion that adoption of the national do-not-call list will not unduly interfere with the ability of telemarketers to reach consumers, we do not find this to be a compelling basis to exempt these entities.

25. We find that the national do-not-call rules do not apply to calls made to persons with whom the marketer has a personal relationship. As discussed herein, a "personal relationship" refers to an individual personally known to the telemarketer making the call. In such cases, we believe that calls to family members, friends and acquaintances of the caller will be both expected by the recipient and limited in number. In determining whether a telemarketer is considered a "friend" or "acquaintance" of a consumer, we will look at, among other things, whether a reasonable consumer would expect calls from such a person because they have a close or, at least, firsthand relationship. If a complaining consumer were to indicate that a relationship is not sufficiently personal for the consumer to have expected a call from the marketer, we would be much less likely to find that the personal relationship exemption is applicable. While we do not adopt a specific cap on the number of calls that a marketer may make under this exemption, we underscore that the limited nature of the exemption creates a strong presumption against those marketers who make more than a limited number of calls per day. Therefore, the two most common sources of consumer frustration associated with telephone solicitations—high volume and unexpected solicitations—are not likely present when such calls are limited to

persons with whom the marketer has a personal relationship. Accordingly, we find that these calls do not represent the type of "telephone solicitations to which [telephone subscribers] object" discussed in 47 U.S.C. 227(c)(1). Moreover, we conclude that the Commission also has authority to recognize this limited carve-out pursuant to 47 U.S.C. 227(c)(1)(E). This subsection provides the Commission with discretion in implementing rules to protect consumer privacy to "develop proposed regulations to implement the methods and procedures that the Commission determines are the most effective and efficient to accomplish the purpose of this section." 47 U.S.C. 227(c)(1)(E). To the extent that any consumer objects to such calls, the consumer may request to be placed on the telemarketer's company's company-specific do-not-call list. We intend to monitor these rules and caution that any individual or entity relying on personal relationships abusing this exemption may be subject to enforcement action.

26. In addition, we decline to extend this approach beyond persons that have a personal relationship with the marketer. For example, Vector urges the Commission to adopt an exemption that covers "face-to-face" appointment calls to anyone known personally to the "referring source." We note that such relationships become increasingly tenuous as they extend to individuals not personally known to the marketer and thus such calls are more likely to be unexpected to the recipient and more voluminous. Accordingly, referrals to persons that do not have a personal relationship with the marketer will not fall within the category of calls discussed above.

27. We also decline to establish an exemption for calls made to set "face-to-face" appointments *per se*. We conclude that such calls are made for the purpose of encouraging the purchase of goods and services and therefore fall within the statutory definition of telephone solicitation. We find no reason to conclude that such calls are somehow less intrusive to consumers than other commercial telephone solicitations. The FTC has reviewed this issue and reached the same conclusion. In addition, we decline to exempt entities that make a "*de minimis*" number of commercial telemarketing calls. In contrast to Congress' rationale for exempting nonprofit organizations, we believe that such commercial calls continue to be unexpected to consumers even if made in low numbers. We do not believe the costs to access the national database is unreasonable for any small

business or entity making a "*de minimis*" number of calls.

28. In response to the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Further Notice of Proposed Rulemaking, CG Docket No. 02-278, FCC 03-62 published at 68 FR 16250, April 3, 2003 (FNPRM) a few commenters contend that any new rules the Commission adopts would not apply to entities engaged in the business of insurance, because such rules would conflict with the McCarran-Ferguson Act. The McCarran-Ferguson Act provides that "[t]he business of insurance * * * shall be subject to the laws of the * * * States which relate to the regulation * * * of such business." 15 U.S.C. 1012(a). The McCarran-Ferguson Act further provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance." 15 U.S.C. 1012(b). American Council of Life Insurers (ACLI) explains that insurers' marketing activities are extensively regulated at the state level. The Commission's proposal, ACLI argues, "intrudes upon the insurance regulatory framework established by the states" and, therefore, should not be applicable to insurers under McCarran-Ferguson.

29. The McCarran-Ferguson Act does not operate to exempt insurance companies wholesale from liability under the TCPA. It applies only when their activities constitute the "business of insurance," the state has enacted laws "for the purpose of regulating" the business of insurance, and the TCPA would "impair, invalidate, or supersede" such state laws. See 15 U.S.C. 1012(b). In the one case cited by commenters as addressing the interplay between McCarran-Ferguson and the TCPA, a federal district court dismissed a claim brought against two insurance companies under the TCPA for sending unsolicited facsimile advertisements. *The Chair King, Inc. v. Houston Cellular Corp.*, 1995 WL 1760037 (S.D. Tex. 1995), *vacated for lack of subject matter jurisdiction* 131 F.3d 507 (5th Cir. 1997). The *Chair King* court found that the TCPA conflicted with a Texas law that prohibited untrue, deceptive, or misleading advertising by insurers and their agents. In its analysis, the court determined that insurance advertising was part of the "business of insurance," and that the Texas law in question was enacted for the purpose of regulating the business of insurance. The court then concluded that because the TCPA