

local customer base, and therefore would be able to telemarket new services to all those customers, regardless of whether they were on the national do-not-call registry, because of the established business relationship exemption. New competitors, on the other hand, would be restricted from calling those same consumers.

88. One approach would be to narrow the “established business relationship” for telecommunications carriers, so that a carrier doing business with customers based on one type of service may not call those customers registered with the national do-not-call list to advertise a different service. We find, however, that the record does not support such an approach in the context of telemarketing calls. Along with the majority of industry commenters in this proceeding, WorldCom maintains that companies “must have flexibility in communicating with their customers not only about their current services, but also to discuss available alternative services or products. * * *” WorldCom Comments at 15. Limiting a common carrier’s “established business relationship” by product or service might harm competitors’ efforts to market new goods or services to existing customers, and would not be in the public interest.

89. WorldCom proposes instead that the Commission revise the definition of established business relationship so that all providers of a telecommunications service—incumbents and new entrants alike—are deemed to have an established business relationship with all consumers. Alternatively, WorldCom suggests that the definition of an established business relationship be revised to exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitors for that service have sufficiently penetrated the market.

90. Although we take seriously WorldCom’s concerns about the potential effects of a national do-not-call list on competition in the telecommunications marketplace, we decline to expand the definition of “established business relationship” so that common carriers are deemed to have relationships with all consumers for purposes of making telemarketing calls. Broadening the scope of the established business relationship in such a way would be inconsistent with Congress’s mandate “to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” See 47 U.S.C. 227(c)(1). To

permit common carriers to call consumers with whom they have no existing relationships and who have expressed a desire not to be called by registering with the national do-not-call list, would likely confuse consumers and interfere with their ability to manage and monitor the telemarketing calls they receive.

91. We further note that with the establishment of a national do-not-call registry, carriers will still be permitted to contact competitors’ customers who have not placed their numbers on the national list. In addition, carriers will be able to call their prior and existing customers for 18 months to market new products and services, such as long distance, local, or DSL services, as long as those customers have not placed themselves on that carrier’s company-specific do-not-call list. For the remaining consumers with whom common carriers have no established business relationship and who are registered with the do-not-call list, carriers may market to them using different advertising methods, such as direct mail. Therefore, we find that treating common carriers like other entities that use the telephone to advertise, best furthers the goals of the TCPA to protect consumer privacy interests and to avoid interfering with existing business relationships.

Interplay Between Established Business Relationship and Do-Not-Call Request

92. In the 2002 Notice, we sought comment on the effect of a do-not-call request on an established business relationship. We noted the legislative history on this issue, which suggests that despite an established business relationship, a company that has been asked by a consumer not to call again, must honor that request and avoid further calls to that consumer. Consumer advocates who discussed the interplay between the established business relationship and a do-not-call request maintained that a do-not-call request should “trump” an established business relationship, and that consumers should not be required to terminate business relationships in order to stop unwanted telemarketing calls. The majority of industry commenters also supported the notion that companies should honor requests from individual consumers not to be called, regardless of whether there is a business relationship. Companies will be permitted to call consumers with whom they have an established business relationship for a period of 18 months from the last payment or transaction, even when those consumers are registered on the national do-not-call

list, as long as a consumer has not asked to be placed on the company’s do-not-call list. Once the consumer asks to be placed on the company-specific do-not-call list, the company may not call the consumer again regardless of whether the consumer continues to do business with the company. This will apply to all services and products offered by that company. If the consumer continues to do business with the telemarketer after asking not to be called (by, for example, continuing to hold a credit card, subscribing to a newspaper, or making a subsequent purchase), the consumer cannot be deemed to have waived his or her company-specific do-not-call request. In some instances, however, a consumer may grant explicit consent to be called during the course of a subsequent purchase or transaction. We amend the company-specific do-not-call rules to apply to “any call for telemarketing purposes” to make clear that a company must cease making telemarketing calls to any customer who has made a do-not-call request, regardless of whether they have an EBR with that customer. We also adopt a provision stating that a consumer’s do-not-call request terminates the EBR for purposes of telemarketing calls even if the consumer continues to do business with the seller.

Tax-Exempt Nonprofit Organization Exemption

93. We reaffirm the determination that calls made by a for-profit telemarketer hired to solicit the purchase of goods or services or donations on behalf of a tax-exempt nonprofit organization are exempted from the rules on telephone solicitation. We again reiterate that calls that do not fall within the definition of “telephone solicitation” as defined in 47 U.S.C. 227(a)(3) will not be precluded by the national do-not-call list. These may include calls regarding surveys, market research, and calls involving political and religious discourse. In crafting the TCPA, Congress sought primarily to protect telephone subscribers from unrestricted commercial telemarketing activities, finding that most unwanted telephone solicitations are commercial in nature. In light of the record before us, the Commission believes that there has been no change in circumstances that warrant distinguishing those calls made by a professional telemarketer on behalf of a tax-exempt nonprofit organization from those made by the tax-exempt nonprofit itself. The Commission recognizes that charitable and other nonprofit entities with limited expertise, resources and infrastructure, might find it advantageous to contract out its