

consumers from telephone solicitations to which they object.

150. Industry members that commented on the calling time restrictions unanimously asserted that the current calling times should be retained. Some explained that any restrictions on calls made during the early evening hours, in particular, would interfere with telemarketers' ability to reach their customers. Consumers, on the other hand, urged the Commission to adopt tighter restrictions on the times that telemarketers may call them. Some object to calls at the end of the day and during the dinner hour; others prefer that telemarketers not be able to begin calling until later in the morning. Some suggest the calling times should parallel local noise ordinances. EPIC advocated allowing consumers to specify the hours they wish to receive calls.

151. The Commission declines to revise the restrictions on calling times. Instead, we retain the current calling times, which are consistent with the FTC's rules. We believe the current calling times strike the appropriate balance between protecting consumer privacy and not unduly burdening industry in their efforts to conduct legitimate telemarketing. We also believe that Commission rules that diverge from the FTC's calling restrictions will lead to confusion for consumers. Moreover, consumers who want to block unwanted calls during certain times will now have the option of placing their telephone numbers on the national do-not-call registry. They will have the additional option of giving express verifiable authorization to only those companies from which they wish to hear. The Commission declines at this time to require companies to adhere to consumers' calling preferences, including "acceptable" calling times. The Commission encourages any seller or telemarketer to comply with consumers' requests not to be called during certain times of the day. We believe that the costs of monitoring calling times for individual consumers could be substantial for many companies, particularly small businesses.

Enforcement Priorities

152. TCPA enforcement has been a Commission priority over the past several years, and we intend that it remain so. In guiding our future enforcement plans, we recognize that the FTC's recent rule changes expand that agency's regulation of telemarketing activities and require coordination to ensure consistent and non-redundant federal enforcement in this area. Most

notably, the FTC's adoption of a nationwide do-not-call registry, the related Do-Not-Call Act, and finally our adoption of requirements that maximize consistency with those adopted by the FTC create an overlap in federal regulations governing major telemarketing activities. There are other overlapping regulations such as provisions governing abandoned calls, transmission of caller ID, and time-of-day restrictions. We hereby direct Commission staff to negotiate with FTC staff a Memorandum of Understanding between the respective staffs to achieve an efficient and effective enforcement strategy that will promote compliance with federal telemarketing regulations.

153. The FCC's jurisdiction over telemarketing is significantly broader than the FTC's. First, as noted above, the FTC does not have authority over telemarketing calls made by in-house employees of common carriers, banks, credit unions, savings and loans, insurance companies, and airlines. In addition, the FTC's telemarketing rules pertain only to interstate transmissions. In contrast, the FCC's telemarketing rules apply without exception to any entity engaged in any of the telemarketing activities targeted by the TCPA and the Commission's related rules, including those that involve purely intrastate activities. 47 U.S.C. 152(b). Given the substantial gaps in the FTC's authority over the full range of telemarketing activities, we contemplate that our enforcement staff will focus particularly on those activities and entities that fall outside the FTC's reach—airlines, banks, credit unions, savings and loans, insurance companies, and common carriers, as well as intrastate transmissions by any entity.

154. Nevertheless, we do not contemplate Commission enforcement that targets only those activities, entities, or transmissions that are outside the FTC's jurisdiction. The TCPA creates a statutory expectation for FCC enforcement in the telemarketing area. See 47 U.S.C. 227(f)(3), (7). Moreover, the TCPA's detailed standards pertaining to do-not-call matters evince Congressional intent that the FCC assume a prominent role in federal regulation of this aspect of telemarketing, a mandate that is not altered by the Do-Not-Call Act. Accordingly, even with the FTC's new do-not-call regulations, including its administration of a national do-not-call registry, we emphasize that the Commission must stand ready to enforce each of our telemarketing rules in appropriate cases. For reasons of efficiency and fairness, our staff will work closely with the FTC to avoid

unnecessarily duplicative enforcement actions.

155. In determining enforcement priorities under the new telemarketing rules, we contemplate that the Enforcement Bureau will continue its policy of reviewing FCC and FTC consumer complaint data and conferring with appropriate state and federal agencies to detect both egregious violations and patterns of violations, and will act accordingly. The Enforcement Bureau has in place effective procedures to review aggregate complaint information to determine the general areas that merit enforcement actions, and to identify both particular violators and the individual consumers who may be able to assist the staff in pursuing enforcement actions against such violators. Enforcement action could include, for example, forfeiture proceedings under section 503(b),⁴ cease and desist proceedings under section 312(c), injunctions under section 401, and revocation of common carrier section 214 operating authority.

Other Issues

Access to TCPA Inquiries and Complaints

156. The Commission stated that the 2002 Notice was "prompted, in part, by the increasing number and variety of inquiries and complaints involving our rules on telemarketing and unsolicited fax advertisements." A few commenters maintain that the Commission should not consider final rules until parties have had an opportunity to analyze the consumer complaints referenced in the 2002 Notice. Other commenters contend that the number of complaints received by the Commission does not necessarily demonstrate a problem that demands government intervention. The ATA filed a Freedom of Information Act (FOIA) request with the Commission on October 16, 2002, seeking access to the TCPA-related informal complaints. The FOIA generally provides that any person has a right to obtain access to federal agency records, subject to enumerated exemptions from disclosure. The FOIA requirements do not apply to records that contain "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. 552(b)(6). Many of the complaints sought by the ATA contain personal private information. In addition, the complaints are part of a

⁴ Before initiating a forfeiture proceeding against most entities that do not hold an FCC authorization, the violator must have received a Commission citation and then engaged in an additional violation. 47 U.S.C. 503(b)(5).