

Comerica Incorporated

April 16, 2004

Federal Trade Commission  
Office of the Secretary  
Room 159-H  
600 Pennsylvania Ave, NW  
Washington, DC 20580



Re: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Sir or Madam:

The following comments are provided on behalf of Comerica Incorporated, a \$53 billion bank holding company located in various states including California, Florida, Michigan, and Texas. Comerica appreciates the opportunity to comment on this proposal.

### Background

The CAN-SPAM Act imposes a series of new requirements on the use of commercial electronic mail messages. The following are our comments regarding the definition of "primary purpose" and other definitions and provisions as requested by the Commission in the March 11, 2004 Federal Register.

### Criteria for Determining Whether "The Primary Purpose" of an E-mail Message is Commercial

The definition of "primary purpose" is critical to ensuring compliance with the CAN SPAM Act. In the course of providing exceptional customer service, companies may make their customers aware of new products and services that they offer. When these offers are sent as the only verbiage in an e-mail message it is obvious that these be considered "commercial" e-mails. However, when these are combined with a transactional or relationship message, the transactional or relationship message should be considered the primary purpose. With many financial service products, informing the customer of new choices is considered part of the service the customer has signed up for. For example, when a customer signs up for brokerage services, they would expect that their relationship officer would inform them of other products/funds that would meet their investment criteria. Also, if a customer has a savings account with a significant balance, they would expect the bank to inform them of other options such as a CD that would provide a larger return on their investment. Newsletters are used as a vehicle to educate and inform the customer. If a customer does not want to receive these e-mails, they will certainly let their financial institution contact know. It is in the best interest of the financial institution to honor that request whether or not they gave the customer the option to opt out. The requirement to clearly and conspicuously identify these types of e-mail messages as "advertisements" may mislead the customer into thinking the entire e-mail is an advertisement and the customer may delete the message without reading it. The customer may then miss out on valuable information. At the very least, there should be an exception from the requirement to identify these messages as "advertisements".

### Modifying What Is a "Transactional or Relationship Message"

The definition of "transactional or relationship" messages should be expanded to include messages that;

- inform the customer of changes in laws which effect their product or service.
- request information from the customer in order to provide quality service.
- reply to any request made by the recipient.

The definition should also clarify the fact that an update or upgrade involves additional cost to the customer does not mean it must be considered a commercial e-mail message.

### **Modifying the 10-Business-Day Time Period for Processing Opt-Out Requests**

The 10-business-day time period for processing opt out requests should be increased to at least 30 days. The ability to implement a central opt out process for e-mail opt out requests requires the involvement of several business units within a corporation. 10 business days does not allow enough time to implement a corporate-wide opt out process. 30 days is a reasonable amount of time and is consistent with the Telemarketing Sales Rule for compliance with the do-not-call registry provision.

### **Issuing Regulations Implementing the Act**

The CAN SPAM Act requires senders of e-mail to give a valid physical address. The commission should clarify what constitutes a valid physical address. Depending on the purpose for this requirement, a P.O. box may better meet the desired outcome of the law. Corporations utilize P.O. boxes in order to expedite the delivery of mail within the corporation. Utilizing a physical address will slow down the delivery process. If this provision of the law is intended to allow the recipient to respond via mail, then a P.O. box should be allowed as a valid physical address. If the intent of the provision was to allow the recipient to locate a physical building, then a P.O. box is not appropriate.

### **System for Rewarding Those Who Supply Information About CAN-SPAM Violations**

Any system for rewarding those who supply information about CAN SPAM violations must take into account the difference between an incidental violation and a flagrant violation of the law.

### **Studying of Subject Line Labeling**

Depending on the definition of "primary purpose", labeling e-mails that have some relationship and some commercial information may lead the receiver of the e-mail to delete the message without opening the e-mail to determine that there is also important information in the e-mail that the customer would like to receive. Also, if the definition of "transactional or relationship" messages are not expanded, some product and service upgrades and updates may also be labeled as advertisements. This could cause the customer to ignore the e-mail and not receive a wanted upgrade.

### **Conclusion**

Comerica commends the Federal Trade Commission for their efforts in implementing a system that will be advantageous to consumers and businesses. Thank you again for the opportunity to comment on this important issue.

Sincerely,



C. Vance Borngesser  
Vice President  
Corporate Legal



Martha K. DenBaas  
Vice President  
Corporate Public Affairs