

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

**IN THE MATTER OF:
NOTICE OF PROPOSED RULEMAKING
FTC TELEMARKETING SALES RULE
Proposed Amendments to the Telemarketing
Sales Rule—16 CFR Part 310**

**FTC File No. R411001
(Submitted April 15, 2002)**

**COMMENTS OF BELLSOUTH CORPORATION, ON BEHALF OF ITS AFFILIATES
AND SUBSIDIARIES**

BellSouth Corporation, through its undersigned counsel, and on behalf of its affiliates and subsidiaries (“BellSouth” or “Company”) hereby submits its comments relating to the above referenced Notice of Proposed Rulemaking (“Notice”).

A. INTRODUCTION

1. Generally, common carriers such as BellSouth regulated by the Federal Communication (“FCC”) are exempt from Federal Trade Commission (“FTC”) jurisdiction. Nevertheless, since BellSouth utilizes third party telemarketing vendors to promote and sell BellSouth products and services, the Company has a legitimate business interest in the regulations affecting these third party vendors. The existing FTC rules relating to telemarketing sales practices have served the public interest by encouraging professional, ethical and responsible marketing and sales via telemarketing. BellSouth insists that all of the telemarketing

sales vendors used by the Company to promote and market its products and services adhere to the highest professional standards, and BellSouth also contractually requires that its third party telemarketing sales vendors comply with all federal, state and local laws and regulations pertaining to telemarketing practices. Consequently, while not directly affecting BellSouth, the FTC's proposed changes to its telemarketing sales rules that could have an indirect impact on the way in which BellSouth products and services are promoted and sold to its customers.

B. SUMMARY OF POSITION

2. BellSouth generally supports the continued need for responsible regulation of telemarketing sales activities within the scope of the FTC's authority to act under the Telemarketing Consumer Fraud and Abuse Prevention Act ("Telemarketing Act") 15 U.S.C 6101-6108. BellSouth questions whether or not additional federal regulatory intervention is warranted at this time. The Company believes that private industry's self regulation in this area has been predominately successful. BellSouth also believes that some of the FTC's rulemaking proposals may extend beyond its statutory authority and may impinge on the jurisdiction of the Federal Communications Commission ("FCC"), and may directly conflict with prior decisions of the FCC in the area of telemarketing sales regulation. Additionally, some of the proposed changes to the FTC rules could have unacceptable economic and operational consequences for affected companies and their customers.

C. COMMENTS

3. BellSouth, with only a few exceptions that will be noted herein, generally supports the filed comments of the Direct Marketing Association, Inc. (“DMA”) and the American Teleservices Association (“ATA”), particularly as these comments relate to the jurisdictional issues, FTC administered Do-Not-Call List registry, predictive dialing, non-expansion of the definition of “outbound telephone call” and the cost/benefit analyses regarding proposed additional requirements that would directly affect the activities of these associations’ member companies and their represented client/companies, including BellSouth. These two trade associations represent many thousands of telemarketing companies as well as companies who employ telemarketing in their businesses as a means of promoting and selling their services. Telemarketing is a well-established, economically efficient means of selling products and services. The DMA and the ATA have both been actively involved in ongoing federal and state efforts to ensure that the telemarketing sales industry is operated in a manner that recognizes the needs of both customers and the businesses that serve those customers, while supporting efforts of federal and state lawmakers and regulators in the prevention of abusive and deceptive business practices and the protection of consumers’ legitimate privacy interests. These collective efforts have led to responsible self-regulation by the telemarketing sales industry, for itself and for its client companies. BellSouth is concerned that the FTC’s proposals may impose substantial unwarranted economic and other burdens upon telemarketing services that could in turn increase BellSouth’s costs of obtaining these services to sell its products and services without any corresponding compelling public interest in such proposed changes.

4. The respective comments of these trade associations should be carefully considered by the FTC in the course of this proceeding in order to avoid inadvertent impediments to the efficient and economic use of telemarketing and telecommunications resources to sell products and services, while addressing the legitimate public interest and consumer privacy issues raised in this rulemaking.

5. BellSouth will not duplicate herein matters that have been sufficiently raised and addressed by these associations in their individual comments. However, BellSouth will elaborate on a few issues raised by the Notice that would uniquely affect the operations and networks of telecommunications common carriers. These issues relate to the proposals affecting Caller ID and like services, and the Company's position on these issues differs in some respects from the positions of the DMA and ATA.

D. Caller ID and Other Privacy Issues

6. In this proceeding, issues have been raised relating to the nature and extent of the uses of Caller ID services and functionality to address some of the consumer control/privacy issues presented by the FTC. Specifically, the question has been raised by the FTC regarding whether a telemarketer should be allowed the option of substitution of the actual telephone number of the seller or charitable organization that is being represented on the call rather than sending the telephone number of the actual telemarketing company making the call to the called party. The purported benefit of such an option would be that the called party would supposedly know the "true seller" on whose behalf the call was being made. BellSouth is concerned with the

technically feasibility, cost and other substantial issues relating to any such calling number substitution option. This option could lead to additional customer confusion, abuses and attendant increases in customer complaint calls to BellSouth's customer service centers due to unintentional number substitution errors and intentional acts of improper substitution.

7. Not only are these Caller ID number substitution issues rightly within the jurisdiction of the FCC, this seemingly innocent proposal could lead to numerous operational, billing, administrative issues and other problems for telecommunications carriers such as BellSouth. In addition, this process would require all carriers to make changes to current systems to accommodate number substitution and to address fraud issues. Moreover, such a change could dramatically alter the nature and effectiveness of the Caller ID and related services currently offered by BellSouth today. BellSouth's customers have certain justified expectations relating to how their Caller ID services will operate, and how Caller ID works in conjunction with other BellSouth services, such as its call return and call trace services. BellSouth is not in favor of any changes to the calling party's obligations relating to passing the telephone number of the calling party.

E. Conclusion

8. BellSouth supports responsible regulation of telemarketing sales activities that are within the FTC's statutory authority. However, as referenced herein and in the comments of the DMA and the ATA, the FTC may be exceeding its authority in proposing some of the rule changes set forth in the Notice. Further, in suggesting certain changes, the FTC may be

impinging on the FCC's existing regulation in certain areas. While, BellSouth's telemarketing sales activities are not directly regulated by the FTC, the telemarketing companies BellSouth hires to promote and sell its services would purportedly be subject to the proposed changes, and BellSouth is concerned that some of these regulations impose undue economic and operational burdens on the telemarketing activities of these companies, and such restrictions could have a negative effect on BellSouth's ability to efficiently and effectively employ telemarketing in promoting and selling its products and services. The number substitution proposal in the section of the Notice discussing Caller ID related issues is inappropriate for the reasons stated herein. Finally, BellSouth believes that existing federal regulations, effective regulatory oversight and the existing responsible self-regulation in these areas dictates that no additional federal regulatory intervention is necessary at this time.

Respectfully Submitted,

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