

Federal Communications Commission  
Washington, D.C. 20554

November 4, 1997

Federal Communications Commission  
2000 M Street  
Washington, D.C. 20554

Koerner, Silberberg & Weiner, LLP  
112 Madison Avenue, 3rd Floor  
New York, New York 10016-7424

Dear Katherine Morici,

In your letter of September 25, 1996, you requested that the Commission issue an opinion stating whether Colorado Prime Corporation (Colorado Prime) has complied with the requirements of the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243. Specifically, you asked whether Colorado Prime could fulfill its obligations to a consumer requesting a copy of its do-not-call policy by releasing a summary version of its do-not-call policy and doing so within thirty days of receipt of the request. You also requested that the Commission determine whether Colorado Prime's employment of Donnelley Marketing Inc. (Donnelley), a private data processing contractor, to maintain its do-not-call list is an encroachment of a consumer's privacy and a violation 47 C.F.R. § 64.1200(e)(2)(iii).

In your letter you stated that Colorado Prime maintains a written do-not-call policy available upon demand to every residential telephone subscriber that requests a copy of it. You enclosed a copy of Colorado Prime's do-not-call policy and attached a summary of the do-not-call policy, which you stated might more readily be understood by a consumer. You asked that the Commission review both documents and declare which of them meets the requirements of the TCPA. You also requested that the Commission declare that Colorado Prime's practice of mailing a cover letter and a copy of its do-not-call policy to subscribers via first class mail within thirty days of receipt of the request fulfills its obligations under Commission regulations implemented pursuant to the TCPA. You described the technical procedures implemented by Colorado Prime and its data processor, Donnelley, to update and maintain Colorado Prime's do-not-call list. You noted that Colorado Prime prohibits Donnelley from disseminating data concerning subscribers that request placement on Colorado Prime's do-not-call list. Lastly, you asked that the Commission confirm your conclusion that Colorado Prime's employment of a private data processing contractor, adhering to the described conditions and prohibitions, does not violate section 64.1200(e)(2)(iii) of the Commission's rules.

The TCPA recognizes the legitimacy of the telemarketing industry but notes that unrestricted telemarketing could be an intrusive violation of privacy and, in some instances, a risk to public safety. One of the Commission's tasks with regard to implementing the TCPA was to consider which method would best accommodate telephone subscribers who do not wish to receive unsolicited advertisements, including live voice solicitations, while not unduly hampering the telemarketing industry.

After considering a number of options, the Commission concluded that company-specific do-not-call lists would be the most effective, least costly, and most easily implemented means of curbing unwanted telephone solicitations.<sup>1</sup> In the *Report and Order*, the Commission stated that the company specific do-not-call lists would best protect residential subscriber confidentiality because do-not-call lists would not be universally accessible, and could be verified with a telemarketer's own customer information.<sup>2</sup>

In the *Report and Order* the Commission adopted section 64.1200(e)(2)(i) of its rules, which states: "Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list," and section 64.1200(e)(2)(iii), which states:

If such (*do-not-call requests*) requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.<sup>3</sup>

Section 64.1200(e)(2)(i) establishes that a telemarketing company or entity must make a copy of its written do-not-call policy available to consumers. The policy statement provided to consumers must be a complete statement of the company's policy for maintaining a do-not-call list. Our rule would not preclude a company from maintaining, for example, separate detailed procedures for its staff to follow in entering the consumer's information in the do-not-call list. Further, a company's do-not-call policy must be available upon demand to subscribers. We emphasize that the policy must be supplied to a subscriber in a reasonable manner and in a reasonable amount of time following the consumer's request. Because the reasonableness of how and when the policy is provided would have to be determined on a case by case basis, we decline to endorse specific time frames, procedures, or policy statements utilized by Colorado Prime or any other entity.

Lastly, we note that section 64.1200(e)(2)(iii) of the Commission's rules clearly contemplates that an outside vendor may record and maintain do-not-call lists for a telemarketing company. This section also prohibits a telemarketing company from forwarding information concerning a consumer's do-not-call list to another company, not affiliated with the telemarketing company.

I hope that this information is helpful.

Sincerely,

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<sup>1</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, *Report and Order*, 7 FCC Rcd 8752, 8763-65 (1992) *Report and Order*.

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. § 64.1200(e)(iii).

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