

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2437

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2437

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2437

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 6, 2001.

Tape Number	Side A	Side B	Meter #
1	x		15 to end
1		x	0 to 7.6
2	x		31.6 to 39.8
Committee Clerk Signature <i>Cris Pigg</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2437 relating to telephone solicitation sales; to provide a penalty; and to provide an effective date.

SENATOR MIKE EVERY, District 12: Cosponsor of this bill. The intent is to put in place a process to protect ND citizens from unwanted telemarketing calls. Written testimony attached.

SUSAN WEFALD, Public Service Commission, on her own behalf, not representing the PSC.

In favor. Written testimony attached.

JACK MCDONALD, ND Newspaper Assn.; DeHart & Darr. In opposition. The same protections are already available at the federal level. This bill will adversely affect ND telemarketing industry. Written testimony attached.

JERRY MALEY, Performance Centers Inc. Opposes this bill. Consumers can get their names on a national no call list free of charge. Telemarketers who belong to the DMA scrub their lists from

Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number SB 2437
Hearing Date February 06, 2001.

the national list. Consumers already have the option of this list and can also go to the attorney general. This will not solve the problem of the fly-by-night out of state operations. It will be detrimental to the telemarketing industry if states start legislating on this issue. The approach should be to make the industry discipline itself and it should be done at the federal level. Think of the jobs this industry brings to ND. Only about 1% of our calls are inside ND.

BRENDA DUSSET, ND Assn. of Nonprofit Orgs. Opposes this bill because it will negatively affect nonprofit organizations' fundraising activities. Maybe what is needed is educating the public about the options already in place.

MARILYN FOSS, submitted written testimony on behalf of WorldCom, Inc. There are consumer protection mechanisms already put in place by the FTC and the FCC.

THOMAS F KELSCH, AT&T, faxed testimony opposing this bill distributed.

Hearing closed.

Committee reconvened. (Tape 2-A-31.6 to 39.8) All members present. Discussion held.

SENATOR TOLLEFSON: This is really an interstate issue since most calls come from out of state.

SENATOR KLEIN: If somebody were actually wronged they have recourse with the attorney general.

SENATOR D. MATHERN: More people need to be made aware of the opt out list.

SENATOR KLEIN: Motion: do not pass. SENATOR TOLLEFSON: Seconded.

Roll call vote: 5 yes; 2 no. Carrier: SENATOR TOLLEFSON

FISCAL NOTE
 Requested by Legislative Council
 01/30/2001

Bill/Resolution No.: SB 2437

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$39,500	\$0	\$39,500	\$0
Expenditures	\$0	\$0	\$46,280	\$0	\$42,930	\$0
Appropriations	\$0	\$0	\$46,280	\$0	\$42,930	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Fiscal impact (expenditures) would be caused by the creation and maintenance of the "do not call" list, as well as by enforcement of violations. Fiscal impact (revenues) would also be caused by customers being charged a fee for being on the list, changing the information on the list or being deleted from the list, as well as for telemarketer access to the "do not call" list.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill allow charges of up to \$5 for each residential customer inclusion in, change to, or deletion from the list, as well as an annual charge of \$10 for each telemarketer to have access to the list. Due to our assumption that the most efficient method of creating and maintaining the list is a web-based system, we do not at this time estimate that the maximum charges would have to be imposed on customers. We do not have a hard number estimate for either customers impacting the list, or telemarketers accessing the list, so we are using a revenue impact based on 10,000 list impacts per biennium, and 100 telemarketer access requests per year. The revenue impact given above is the midpoint between, at the low end, the revenue that would be generated by 200 telemarketer requests at \$10 each, plus 10,000 customer charges at \$2.50 each and, at the high end, the same telemarketer revenue plus 10,000 customer charges at \$5 each. The low end of the estimate is \$27,000, the high end of the estimate is \$52,000. The midpoint, reflected in the box above, is \$39,500.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated expenditures include creation and maintenance of the list (a PSC expenditure) and enforcement (an Attorney General expenditure).

The PSC assumes creation of a web-based list, with customers inputting their own data onto the list site and telemarketers obtaining updated list information from the web site. The PSC has consulted with the Information Technology Division about estimated costs associated with FTD's creation and maintenance of the web-based list. These costs are estimated to include a one time cost of approximately \$3350 for creation of the site, including the ability to accept payment by credit card, and ongoing monthly costs of approximately \$320. Consequently, the PSC has estimated the costs for the 2001-03 biennium at \$11,030 and for the 2003-05 biennium at \$7680.

The Attorney General's Consumer Protection Division has estimated the need for an additional one-half FTE for enforcement purposes. The Division estimates the costs for the additional one-half FTE at \$32,500 per biennium. The Division also estimates an additional biennial amount of \$2750 in its operating line item for hearing officer services for enforcement proceedings.

These total the estimated expenditures noted above, \$46,280 for the 2001-03 biennium and \$42,930 for the 2003-05 biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Appropriations would be required for all operating line item increases and the additional one-half FTE noted in the Expenditures section, above, for both the PSC and the Attorney General's Consumer Protection Division.

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	02/05/2001

Date: Feb 26/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2437

Senate Industry, Business and Labor Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen Klein Seconded By Sen Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every		✓
Senator Klein - Vice Chairman	✓		Senator Mathern		✓
Senator Espegard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Sen. Tollefson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 6, 2001 2:58 p.m.

Module No: SR-21-2516
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**SB 2437: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2437 was
placed on the Eleventh order on the calendar.**

2001 TESTIMONY
SB 2437

Testimony on SB 2437

Mr. Chairman and members of the Committee:

For the record my name is Sen. Mike Every of Minnewaukan. I represent District 12. Over the last several months as I traveled across our district visiting with people, I got to meet many people and one of the recurring issues that was brought up was infringement of personal family time by telemarketers. We've all experienced this at one time or another. In most of our homes it happens on a daily basis. I'm not saying it was the biggest issue on people's minds, but I heard it enough, that I thought it deserves attention. Something needs to be done about this issue. I'm not saying we should infringe upon the rights of good telemarketing companies. A lot of our small communities have good reputable telemarketing companies that are employing our local folks and helping our economy grow. What I'm trying to do with SB 2437 is put in place a process that will protect our citizens from unwanted telemarketing calls that have become nuisances.

I'll be the first to admit that the bill may not be perfect and would offer some suggestions that will make the bill even more workable. But what this bill attempts to do is protect North Dakota consumers, while attacking problems through government. This bill will protect good businesses while holding unscrupulous out of state telemarketers from scamming our most vulnerable people. This is the reason behind the bill, now I'll briefly attempt to explain the sections of the bill.

Section - 01 of the bill gives the definitions of the bill.

Section - 02 of the bill explains what is prohibited by telemarketers.

Section - 03 of the bill establishes a database by the Public Service Commission and gives the PSC authority for rules and regulations, for a no call list. One intention would be to have the PSC in their rule making authority, use their website to have forms available to collect the names of consumers.

Section - 04 of the bill allows the commission to use a national database if implemented by the FCC.

Section – 05 of the bill sets up a fee of \$5.00 for the consumer to be put on a no call list, while charging the telemarketer \$10.00 to get access to the list. The section also sets up costs for copies of the PSC lists.

Section – 06 of the bill sets up a process where the telemarketer has to identify themselves and if asked must give the consumer a valid telephone number and address.

Section – 07 of the bill gives the Attorney General the authority to stop the telemarketer and collect a civil penalty if warranted.

Section – 08 of the bill gives the Attorney General its' power for investigating complaints and sets up rules and procedures to do this.

Section – 09 of the bill sets up the cost recovery process.

Section – 10 of the bill sets up the process for the consumer to bring action against a company who violates the law.

Section – 11 of the bill limits the time a consumer can bring action against a company.

Section – 12 of the bill spells out other penalties in section 51-15 can also be applied.

Section –13 of the bill protects the telephone company who provides caller ID service from liability.

Section 2 of the bill provides the effective date for establish the database in August of 2001 and provides an August of 2002 for all other purposes of the bill.

Mr. Chairman and members of the Committee: One addition to the bill would be to set-up a registration process to know who's making the solicitation calls in the state. I plan to have amendments drawn up that will address the registration needs. I intend to work with the Public Service Commission and the Attorney General's office to make necessary additional changes.

SB 2437

**Presented By: Susan E. Wefald
Public Service Commission**

**Before: House Industry, Business, and Labor Committee
Duane Mutch, Chairman**

Date: February 6, 2001

TESTIMONY

Mr. Chairman and members of the Senate Committee on Industry, Business, and Labor, I am Public Service Commissioner Susan Wefald. I am offering my own testimony on this bill today and am not speaking in behalf of the whole Commission. I am in support of 2437.

SB 2437 is an attempt to address problems associated with telemarketing and for this reason I support it.

Unlike an outright prohibition or a burdensome financial obligation, SB 2437 creates a scheme that is voluntary for consumers with only a minimal financial impact on telemarketers. I believe the proposal offers good protection to consumers who want it, without unnecessarily burdening an important industry.

I believe the following components of this legislation are key to its benefits: Most importantly, appearing on the list is within the control of each consumer. If limiting telemarketing calls is important to a person, that person can be on this list for a nominal fee. Likewise, the consumer also has a choice regarding whether or not he will receive telemarketing calls representing charitable organizations. It is important to note that this proposed legislation does not allow any other exemptions. In some other states that have enacted this type of legislation, there are numerous exemptions which allow many telemarketers to call, even if a person has signed up to be on the "list." It is important to the spirit of this

legislation to keep exemptions only to charitable organizations, and that is only if the consumer wishes to grant that exemption.

Yes, it is true that there is a national voluntary "do not call" list maintained by the Direct Marketing Association. (DMA). We often tell people about the forms that can be filled out and sent into that organization. However many consumers over the years have learned that observance of the "do not call" provisions is optional and limited primarily to DMA members.

Another important point is the cost to telemarketers to obtain the list is nominal. The ten dollar fee should impose no economic burden on any telemarketer.

Also, there are a variety of ways that the Commission can determine to administer the database. One possible way is to solicit bids from the private sector for administration of the database and the distribution of the "do not call" lists. Privatization of this function would mean additional jobs and income for a private business in North Dakota. Another possible way would be for the Commission to set up a way that consumers could register themselves on the list through the Internet.

The Commission has prepared a fiscal note on this bill, which is available to the Committee.

February 6 2001

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
SB 2437

CHAIRMAN MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of DeHart & Darr, a marketing agency doing business in many states, including North Dakota, and the North Dakota Newspaper Association. We oppose **SB 2437** and respectfully request a **do not pass**.

We certainly respect the intentions of the sponsors of this bill, whom I note are not very far away. However, we believe this bill is not needed, will duplicate services already available on the federal level, and will affect North Dakota's economy.

First, I'm not sure why we want to set up an expensive state operation and charge North Dakotans a fee to fund it when the exact same services are already available for free on a nationwide basis. You'll note from the 1999 Letter to the Editor from *The Bismarck Tribune* (attached) that a woman from Napoleon asked this same question when similar legislation was being considered last session. A copy of the registration form for this service is also attached to my testimony.

Additionally, you'll note from the 1/24/00 clipping attached, that consumers favor the national "do not call" list described in the article.

The federal law already in existence provides callers with protection for 10 years. Telemarketing is a proven and efficient way to sell products. According to statistics from the Direct Marketing Association, there are 11,714 telemarketing jobs in North Dakota right now that generate approximately \$1.13 billion in sales for the companies doing the advertising and telemarketing. Do we want to jeopardize this industry in North Dakota with a law that duplicates federal law and makes it more difficult for the industry to operate in North Dakota? I don't think that's in the best interests of North Dakotans, particularly some of the small towns in the state where these businesses operate.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

B. TRIB —
FEB., 1999

Remedy exists

KAREN ST. GEORGE
Napoleon

As a newcomer to North Dakota, I don't understand why a financially conservative political body wants to waste money. I am referring to the proposal before the Legislature to set up a state agency to stop unwanted telemarketers.

Anyone who wants to stop telemarketers from calling their home can. They need to simply send their request, including their name and address and signature, to: Direct Marketing Association Telephone Preference Service, P.O. Box 9014, Farmingdale, N.Y. 11735-9014.

In addition, sending the same information can stop unwanted junk mail. That address is: Direct Marketing Association Mail Preference Service, P.O. Box 9008, Farmingdale, N.Y. 11735-9008.

Both services are free.

Pub Aug

FTC holds forum reviewing telemarketing sales rule

1/24/00

By JEREMY RATNER

WASHINGTON, DC—At the Federal Trade Commission's public forum Jan. 11, direct marketers, consumer advocates, and state officials discussed the "do-not-call" provision of the Telemarketing Sales Rule (TSR) of 1995.

There was a stark contrast in the proposals suggested by the direct marketers and the consumer advocates. While the marketers favor a company specific "do-not-call" list, many of the consumer advocates at the forum would prefer a national "do-not-call" list. It is the intention of the FTC to review the Telemarketing Sales Rule throughout 2000, through a series of forums.

In 1994, President Clinton signed into law the Telemarketing and Consumer Fraud and Abuse Act, which directed the FTC to draft rules. One of

the provisions of the rule prohibits telemarketers from calling a person who has asked not to be called by the seller. The Federal Communications Commission (FCC) also put out regulations regarding this topic. The FCC's Telephone Consumer Protection Act (TCPA) also has a "do-not-call" provision. However, the FTC's Telephone Sales Rule directs the FTC and states to enforce abuses by telemarketers, whereas consumers can file private rights of action under the TCPA.

A key bone of contention between the direct marketers and the consumer advocates was whether a company by company "do-not-call" list would be sufficient enough to satisfy consumers. Robert Sherman, legal counsel for the Direct Marketing Association (DMA), stated that company-specific "do-not-call" lists are ideal, "...because it gives the consumer the ultimate choice." Some of the con-

sumer advocates at the panel want the FTC to endorse a national database of citizens who do not wish to be called by telemarketers.

In addition to the two federal laws, several states have enacted laws seeking to curb telemarketing abuses. For example, in Florida and Georgia, residents pay \$10 to be put on a statewide "do-not-call" list. Kentucky and Tennessee provide this service for free to their residents.

The FTC plans to hold a number of public forums addressing this topic throughout the rest of the year. FTC regulators will likely seek to update the Telemarketing Sales Rule to appease both direct marketers and consumers who find this type of marketing so invasive.

JEREMY RATNER, can be reached at (703) 907-7928, or jratner@dma.org

FOSS AND MOORE

— ATTORNEYS AT LAW —

314 EAST THAYER

P.O. BOX 2216

BISMARCK, ND 58502-2216

MARILYN FOSS
SHERRY MILLS MOORE

PHONE: 701-222-4777
FAX: 701-222-8502

February 5, 2001

The Honorable Duane Mutch
Chair,
State Capitol
Bismarck, ND

RE: Senate Bill No. 2437

Dear Chair Mutch:

WorldCom, Inc. has reviewed Senate Bill No. 2437, which has been referred to the Senate Committee on Industry, Business and Labor. Telemarketing is a legitimate business practice that is essential to our rapidly growing economy. Many people prefer to do business over the telephone, as evidenced by the hundreds of billions of dollars in telemarketing sales that are transacted annually. However, for people wishing not to receive telemarketing sales calls, there are mechanisms in place by the Federal Communications Commission and the Federal Trade Commission to limit the telemarketing calls they receive.

WorldCom believes that compliance and enforcement of these existing rules would be much more effective than creating a third type of do-not-call list under state administration. State maintained do-not-call lists are administratively burdensome and costly to manage. Rather than create an additional state program and database as directed by Senate Bill No. 2437, it is much more efficient to promote and enforce rules that already exist.

Please contact me at 222-4777 if WorldCom can provide more information to assist you and the Committee in your deliberations. I hope you agree that Senate Bill No. 2437 should be revised to reflect FCC and FTC rules.

Sincerely yours,
FOSS AND MOORE

Marilyn Foss
Marilyn Foss

No Need to Create a THIRD Do-Not-Call List Instead -- Promote and Enforce the Other TWO Options

Telemarketing

Telemarketing is a legitimate business practice that is essential to our rapidly growing economy. Many people prefer to do business over the telephone, as evidenced by the hundreds of billions of dollars in telemarketing sales that are transacted annually. However, for people who prefer not to receive telemarketing sales calls, there are two currently available options.

Current Options

1. The first option enables consumers to minimize telemarketing calls in general. A national do-not-call list, called the Telephone Preference Service, is maintained by a national trade association, the Direct Marketing Association. Consumers who would like to be included on this list can send a postcard to the DMA with their name, telephone number and signature. The DMA provides this list to its members and other telemarketers, who remove the listed phone numbers from their calling lists.

Telephone Preference Service
Direct Marketing Association
P.O. Box 9014
Farmingdale, NY 11735-9014

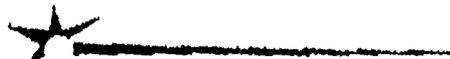
2. The second option enables consumers to limit the commercial telemarketing calls they receive from specific companies. Federal law and some state laws require telemarketers to maintain internal do-not-call lists. Consumers should simply tell the telemarketer that they do not wish to be called by them again and provide their name and telephone number for verification. This option allows consumers to choose which types of calls they will not receive. For example, if someone believes they are never going to purchase vinyl siding because they live in a brick home, they can tell a vinyl siding company not to call them again. However, the same person may be interested in learning about different types of Internet service providers and therefore would not request to be added to those companies' do-not-call lists.

Recommendations

MCI WorldCom believes that these two options provide effective mechanisms for consumers who would like to limit the telemarketing calls they receive. MCI WorldCom believes that compliance and enforcement of these two options would be much more effective than creating a third type of do-not-call list, such as a state list. State maintained do-not-call lists are administratively burdensome and costly to manage. Rather than create an additional state program and database, it is much more efficient to promote and enforce the two options that already exist.

It is also important to note that no do-not-call list can prevent all telemarketing calls. Such lists have exemptions for non-profit organizations, political candidates, surveys and polling groups, etc.

December 2000


MCI WORLD COM SM

Testimony of Thomas F. Kelsch

On behalf of AT&T Corp.

Before the Senate Industry, Business, and Labor Committee

North Dakota Senate Bill 2437

February 6, 2001

Good morning, Mr. Chairman and members of the Committee. My name is Thomas F. Kelsch and I represent AT&T Corp. Thank you for extending this opportunity for me to express AT&T's concerns relating to SB 2437.

As you know, SB 2437 would require the PSC to establish and operate a state-wide "do not call" list with the names and telephone numbers of residential telephone subscribers who object to receiving telephone solicitation calls. It would prohibit telemarketers from calling a number on that list more than once in a twelve month period. The PSC would have the tasks of, among other things: a) administering the list, b) establishing how a person should go about putting his or her name on the list, having a name removed from the list, and c) determining how long an individual's name should remain on the list without a renewal.

SB 2437 would also provide that if the FCC establishes a single national "do not call" data base, the PSC would be required to include within the proposed state-wide data base the names of North Dakota residents appearing on the national data base. The bill sets a fee for having one's name included on the state-wide list, and a fee for receiving a copy of the list. It also contains specific requirements for identification of a telemarketer at the beginning of a solicitation call; it prohibits the use of any method to block or circumvent a subscriber's caller identification service; it delineates the powers of the attorney general to investigate violations and impose penalties; and it provides for a private right of action against telemarketers who violate the Act, with liquidated damages of \$2,000 per occurrence.

AT&T's concerns with this bill may be briefly outlined as follows:

- The addition of a new, state-wide do-not-call list will create undue confusion within the telemarketing industry, and would impose new and unnecessary costs on those businesses which are already in compliance with state and federal law.
- Unlike existing, available data bases, the proposed do-not-call list is not free to the consuming public, and therefore imposes new costs on consumers.
- The administration of the state-wide do-not-call list will impose new duties upon the PSC, ranging from new rule-making to the nuts and bolts of managing this data base, at a time when the commission is already under considerable burden.
- The proposed merger between a future FCC list and the new state-wide list will increase administrative expenses rather than reducing them.
- Many legitimate telemarketing entities may not be able to comply with the identification requirements contained in SB 2437.
- The establishment of a private right of action will punish legitimate operators but will not be effective against more elusive "fly by night" operators.

AT&T believes that, because the existing frame work of federal legislation and regulation already establishes comprehensive policies and procedures to protect the interests of consumers, further state regulation such as SB 2437 is unnecessary, and indeed may prove detrimental to both consumer and businesses within the State.

In response to abuses in telemarketing practices perpetrated by less than scrupulous telemarketers, two major pieces of federal legislation were enacted: first, the Telephone Consumer Protection Act of 1991, 47 USC 227 (known as the "TCPA"), together with FCC rules promulgated in FCC Docket 92-90 to implement it; and secondly, the Telemarketing and Consumer Fraud and Abuse and Prevention Act, 15 USC 6101 et seq. (the "TCFAPA"), together with rules promulgated by the Federal Trade Commission, 16 CFR Part 310 to implement it. These federal acts, and their associated rules, contain enforcement and penalty provisions for rule violations.

It is AT&T's policy to adhere to all legislative and regulatory rules affecting its businesses, and to practice responsible telemarketing. So, AT&T has various policies and practices in place to implement the provisions of the TCPA and and TCFAPA. For example, AT&T's policies and practices ensure that residential telephone subscribers do not receive unsolicited telemarketing calls after the customer has notified AT&T that he or she does not want to receive any further telemarketing calls from AT&T. Personnel involved in telemarketing for AT&T are trained, informed, and directed to comply with AT&T's do-not-call policy. AT&T does not share or disclose a subscriber's do-not-call request with external parties.

When a request is received from a residential telephone subscriber not to receive telemarketing calls from one or more AT&T business groups, the request is noted on the subscriber's file and the subscriber's name and telephone number are recorded and placed on the appropriate do-not-call list(s). AT&T informs the subscriber that his or her request will be implemented as soon as possible, and in most cases, AT&T sends a letter to the subscriber confirming that AT&T has updated its records and added the name to the appropriate do-not-call list. Additional written material is also available, including a complete description of AT&T's residential do-not-call policy, and information for customers to contact with additional questions or for changes in their requests.

AT&T honors a do-not-call request for as long as the law requires. For requests made directly to AT&T, we will honor the request for a minimum of 10 years, as required by the FCC's rules. AT&T implements these requests without any cost to the consumer, unlike SB 2437 which requires a fee from the public.

In addition, although the FCC does not presently administer a nation-wide do-not-call list, the Direct Marketing Association maintains a general list on behalf of a broad segment of the industry. Consumers can have their names included on this list free of charge. The use of this centralized list reduces AT&T's costs of administration, because the list does not have to be "scrubbed" to include outside lists (such as the one being proposed in SB 2437). AT&T believes that the addition of a new state-wide list is completely unnecessary in view of the availability of this DMA list.

The vast majority of complaints from consumers concerning telemarketers involve companies that already disregard existing statutes and regulations. More regulation will only impact those legitimate enterprises that do comply with the law—such as AT&T—and are likely to be ignored by the “fly by night” operators who are only seeking short term profits. These types of operators are also going to be difficult for consumers to find and pursue, in the event of a violation of SB 2437. The institution of a private action against such an operation will be difficult if not impossible for a consumer to manage. On the other hand, a company such as AT&T will be a huge target for mistaken or unfounded claims. We would therefore urge that you refrain from expanding existing law, and that you leave the enforcement of that law exclusively in the hands of the Attorney General.

Furthermore, the effectiveness of existing federal laws and regulations are under a fairly regular review process—the FTC last year conducted a five-year review of the TCFAPA. In view of this on-going review, the thrust of which is on the enforcement provisions of this federal law, AT&T suggests that the prudent course of action for the North Dakota Legislature is to refrain from making any changes to existing law until it has had the opportunity to review any changes adopted and implemented by the FTC. Such an approach will enable the Legislature to determine whether any additional state action is necessary or appropriate.

If the above recommended approach is not adopted, AT&T proposes the following amendment to SB 2437:

No telemarketer shall make or cause to be made any unsolicited telephonic sales call to any residential telephone number unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity, in compliance with 47 CFR 64 or 16 CFR 310.

SB 2437 would also add two identification requirements which will be difficult for many companies, including AT&T, to comply with. The first of these is the requirement that a telemarketer provide a call-back number for the person making a sales solicitation call. The second is the requirement that a telemarketer not block or otherwise circumvent a subscriber's caller ID device. Most telemarketers utilize an equipment configuration which simply does not allow an operator to receive in-coming calls. Moreover, even where an operator might be able to receive in-coming calls, the chances of getting through on that number during normal business hours are going to be very poor, because after all the operator (or whoever is in that particular station) is continually engaged in making out-going calls. In addition, because the equipment configuration used by many operators does not allow in-coming calls, it also may not send out the signal necessary for the use of caller ID. As a result, many times when a telephone solicitor calls, the subscriber's caller ID will register a message such as “number not available” or “unknown caller.” A sophisticated subscriber to a caller ID service will know right away

that this means a telemarketer is on the line. But this absence of a caller ID signal should not be interpreted as an attempt to "block or circumvent" the caller ID service.

Thus, AT&T would recommend first, deleting the requirement that a call-back number be provided, and secondly, that the prohibition on blocking or circumventing caller ID be tempered with the modifier "willfully."

To summarize, AT&T is opposed to additional state legislation in this area that is either duplicative of efforts on the federal level or which imposes unreasonable requirements on legitimate enterprises. Such legislation imposes a substantial burden on national companies, such as AT&T, which results in higher costs to the consumer. We urge you to reject SB 2437, or, at the very least, modify it so that it is more directly consistent with existing federal law.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you may have. Thank you.

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