

# EXHIBIT 5

H.R. REP. 101-633, H.R. Rep. No. 633, 101ST Cong., 2ND Sess. 1990, 1990 WL 259268 (Leg.Hist.)

**\*1 TELEPHONE ADVERTISING REGULATION ACT**

**HOUSE REPORT NO. 101- 633**

July 27, 1990

[To accompany H.R. 2921]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2921) to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

**PURPOSE AND SUMMARY**

The purpose of the bill (H.R. 2921) is to protect consumers by restricting the use of telecommunications equipment for specific, unsolicited advertising purposes. The bill makes it unlawful, within the United States, to use automatic dialing systems for the transmission of prerecorded solicitations via the telephone to individuals objecting to such calls. The legislation also applies to the sending of unsolicited advertisements via facsimile machines. While prohibiting these specific activities, the Committee does not attempt to make all unsolicited telemarketing or facsimile advertising illegal because telephone solicitation, when conducted properly, is an established lawful marketing practice.

H.R. 2921 is designed to retain a measure of control for both individual telephone customers and owners of facsimile machines. The legislation calls for a Federal Communications Commission (Commission) rulemaking to establish a national clearinghouse that collects and manages lists of individuals and businesses who object to receiving unsolicited advertising in the form of prerecorded solicitations or unsolicited advertising via facsimile machines. These lists would be made available to telemarketers who would be prohibited from sending unsolicited advertising by means of prerecorded messages or facsimile to people on the lists.

In developing the listing mechanism, the Commission is required to issue regulations outlining how consumers are to be notified of their privacy rights. In addition, H.R. 2921 also allows the Commission to consider more efficient, effective, or economical alternatives to the listing mechanism, provided the alternative results in equivalent consumer protection. Finally, the bill directs the Commission to establish technical standards governing the use of automatic telephone dialing systems and facsimile machines.

#### BACKGROUND AND NEED

\*2 In the United States, use of the telephone and other telecommunications technologies in the conduct of business has been common since the 1920's. Telemarketing offers businesses a cost-effective opportunity to broaden their markets as well as provide fast, efficient customer service information. However, with the rapid decrease in the cost of telecommunications and the adoption of sophisticated telemarketing tools by businesses around the country, the number of unsolicited telemarketing practices has increased overwhelmingly.

Recently, advertisers have seized on facsimile machines as a potent tool for direct marketing of a number of products and services. Coupled with a computer or automatic dialer, an advertiser's facsimile machine can deliver tens of thousands of unsolicited messages per week to other facsimile machines across the country. Unsolicited telemarketing most often is targeted toward consumers who are not familiar with the telemarketer's product or service and frequently represents more of a nuisance than an aid to commerce. Congressional action has been prompted by the increase in the number and sophistication of telemarketing methods which have become unacceptably intrusive.

#### AUTOMATIC DIALER RECORDED MESSAGE PLAYERS (ADRMP'S)

In recent years a growing number of telemarketers have begun using automatic dialing systems to increase their number of customer contacts. The Committee record indicates that ADRMP's are used by more than 180,000 solicitors to call more than 7 million Americans every day. Each ADRMP has the capacity to automatically dial as many as 1,000 phones per day. ADRMP's often are programmed to dial sequential blocks of telephone numbers, including those of emergency public organizations and unlisted subscribers. Since ADRMP's can "seize" a recipient's telephone line once a phone connection is made and may not release the line when the recipient hangs up, they can result in intrusive and potentially dangerous use of telecommunications equipment. The Committee record includes examples of ADRMP's calling and seizing the telephone lines of public emergency services, dangerously preventing those lines from being utilized to receive calls from those needing emergency services. In addition, customers who pay additional fees for cellular phones, pagers, or unlisted numbers are inconvenienced and even charged for receiving unsolicited ADRMP calls. This legislation prohibits telephone and facsimile advertisers from using machines to call these numbers.

Due to ADRMP's technical flaws, consumer complaints about their use have prompted more than 27 state legislatures to enact or introduce legislation that restricts or totally bans the use of ADRMP's. However, because regulatory jurisdiction is shared between federal and state agencies, telemarketers have been able to circumvent more restrictive regulation. By altering the routing of their calls among intrastate and interstate telephone lines, telemarketers have sought the least restrictive regulatory requirements. H.R. 2921 is an attempt to resolve the patchwork of intrastate and interstate regulation. The bill accomplishes this by establishing a single set of rules to guide telemarketers. In addition, the bill provides the Commission an enforcement mechanism that can be used to control the ever increasing telemarketing industry without overburdening the Commission's limited resources. The National Association of Regulatory Utility Commissioners (NARUC) has endorsed this legislation since it would eliminate the opportunity for telemarketers to easily evade individual state telemarketing regulations.

#### FACSIMILE ADVERTISING

\*3 An office rarity a few years ago, the facsimile machine has become a primary tool for business to relay written communications and transactions quickly. In an effort to speed communications and cut overnight delivery costs, 2 million offices in the United States currently send more than 30 billion pages of information via facsimile each year. However, the proliferation of facsimile machines has been accompanied by explosive growth in unsolicited facsimile advertising, or "junk fax."

Facsimile machines are designed to accept, process, and print all messages which arrive over their dedicated lines. The fax advertiser takes advantage of this basic design by sending advertisements to known fax numbers, knowing that his or her advertisements will be printed out on the recipient's machine. This type of telemarketing is problematic for two reasons. First, it shifts some of the costs of advertising from the sender to the recipient. Second, it occupies the recipient's facsimile machine so that it is unavailable for other messages while processing and printing the fax advertisements.

When an advertiser sends marketing material to a potential customer through regular mail, the recipient pays nothing to receive the letter. In the case of fax advertisements, however, the recipient assumes both the cost associated with the use of the facsimile machine and the cost of the expensive paper used to print out facsimile messages. It is important to note that these costs are borne by the recipient of the fax advertisement regardless of their interest in the product or service being advertised.

In addition to the costs associated with fax advertisements, when a facsimile machine is receiving a fax, it may require several minutes or more to process and print the advertisement. The fax machine is then unable to process actual business communications. Only the most sophisticated and expensive facsimile machines can process and print more than one message at a time. Since businesses have begun to express their concerns on the interference and interruptions and expenses that junk fax have placed upon them, states are taking action to eliminate these telemarketing practices. Connecticut and Maryland have recently enacted laws banning the use of facsimile machines for unsolicited advertising. Similar bills are currently pending in the legislatures of 21 other states.

#### HEARINGS

Three bills, H.R. 628, H.R. 2131, and H.R. 2184 were the focus of a hearing on telemarketing practices held by the Subcommittee on May 24, 1989.

The Committee received testimony from the following witnesses: The Honorable Barney Frank (D-Mass.), The Honorable Marge Roukema (R-N.J.), and The Honorable Christopher Shays (D-Conn.), U.S. House of Representatives; Mr. Richard A. Barton, Senior Vice President, Government Affairs, Direct Marketing Association, Inc.; Mr. Steven S. Seltzer, President, Modern Communications Corporation (representing Telocator); Professor Robert L. Ellis, Indiana University School of Law; and Mr. John M. Glynn, Office of People's Counsel, State of Maryland (representing National Association of State Utility Consumer Advocates).

#### COMMITTEE CONSIDERATION

\*4 H.R. 921 reflects a combination of provisions of three separate bills affecting telemarketing practices. The bill specifically restricts certain uses of automatic telephone dialing systems and telephone facsimile machines which they are conveying unsolicited advertising. The regulations adopted in H.R. 2921 were originally proposed in H.R. 628, H.R. 2131, and H.R. 2184.

H.R. 2921, the "Telephone Advertising Regulation Act," was introduced on July 20, 1989, and considered in an open markup session on the same day. The Subcommittee on Telecommunications and Finance reported the legislation by voice vote to the full Committee on Energy and Commerce without amendment.

On January 23, 1989, the full Committee on Energy and Commerce in an open markup session considered H.R. 2921. An amendment in the nature of a substitute was approved by the Committee by voice vote. The amendment incorporated technical changes and clarifying language stemming from comments received after the Subcommittee markup. The changes clarified definitions of terms and restrictions incorporated in the bill; allowed the Federal Communications Commission more time and latitude in fulfilling its responsibilities imposed by the bill; modified the bill's technical and procedural identification standards; temporarily exempted from technical identification standards fax machines unsuitable for advertising; required a more technically reasonable disconnect standard for auto-dialed calls, and clarified the states' authority to impose more restrictive intrastate requirements.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee held hearings and made oversight findings that are reflected in this report.

## COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

## COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 2921 will be approximately \$350,000 in FY 1991 and \$250,000 each year thereafter.

However, the Committee believes that these costs will be offset in their entirety from fees paid by users, and will result in no significant additional costs to the Federal Government.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. Congress,  
Congressional Budget Office,  
Washington, DC, June 21, 1990.

Hon. John D. Dingell,  
Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2921, the Telephone Advertising Regulation Act, as ordered reported by the House Committee on Energy and Commerce, May 15, 1990. We expect that implementation of the bill would result in no significant additional cost to the federal government and in no cost to state or local governments.

\*5 H.R. 2921 would prohibit sales organizations from directing unsolicited telephone facsimile transmissions and computerized telephone calls to persons who do not want to receive such calls. The Federal Communications Commission (FCC) would be required to initiate an inquiry to establish and maintain a list of persons who object to being solicited over the telephone. Companies that do not use the list to purge their files would be subject to fines by the FCC. The bill would also require the FCC to revise certain technical and procedural standards for facsimile machines and automatic telephone dialing systems.

Based on information from the FCC, CBO estimates that conducting the inquiry, initiating a rulemaking, and establishing and operating the listing mechanism required by the bill would cost about \$350,000 in 1991 and \$250,000 each year thereafter. The estimate assumes that telephone companies would establish lists at the local level, which would be compiled into a master list by the FCC. H.R. 2921 would require the FCC to recover—from persons obtaining the list—all costs incurred in compiling and maintaining the list. As a result, we expect that implementation of the bill would not result in significant additional net cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Laura Carter, who can be reached at 226-2860.

Sincerely,

Robert F. Hale  
(For Robert D. Reischauer, Director).

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill.

The Committee does not believe that an inflationary impact on the economy will result from the passage of H.R. 2921.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE

This section states that the Act may be cited as the "Telephone Advertising Regulation Act."

### SECTION 2. AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

#### Subsection A. Definitions

"Automatic telephone dialing system" means any equipment which has the capacity to store or produce numbers to be called, using a random or sequential number generator; to dial such numbers; and to deliver, without initial live operator intervention, a prerecorded voice message to the number dialed, with or without manual assistance.

It should be noted that the bill's definition of an "automatic telephone dialing system" is broad, not only including equipment which is designed or intended to be used to deliver automatically-dialed prerecorded messages, but also including equipment which has the "capability" to be used in such manner. The Committee is aware of concerns that this broad definition could cover the mere ownership of office computers which are capable, perhaps when used in conjunction with other equipment, of delivering automated messages. Section 225(b)(2), does not impose restrictions on the ownership of such equipment, but only its active "use" to deliver automatically dialed prerecorded telephone solicitations without live operator intervention. A live operator would be able to disconnect a call to a customer, eliminating the problem of "seizing" a customer's line. The bill does not apply to ADRMP solicitations that include live operator intervention.

\*6 "Telephone facsimile machine" means equipment which has the capacity to transcribe text, images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line and to receive such signals over such a line and to produce a copy of the transmitted text and images.

"Telephone solicitation," means the unsolicited initiation of a telephone message, without initial live operator intervention, for the purpose of encouraging a person to purchase, rent, or invest in property, goods, or services. The definition of "telephone solicitation" contained in the legislation does not include soliciting by political groups and charities. Research into potential constitutional issues by the American Law Division of the Congressional Research Service revealed that there is considerable precedent for establishing exclusionary lists for consumers and for placing reasonable time, place, and manner restrictions on commercial speech, such as telephone solicitation. However, the report concludes that extending such restrictions to political speech might well violate First Amendment rights. Accordingly, the Committee clearly and intentionally does not extend the restrictions beyond commercial speech.

"Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission. The Committee is not attempting to eliminate every phone call consumers may find intrusive. However, the legislation does establish limited and reasonable place and manner restrictions on the most intrusive of these calls, primarily those originating from automatic dialed recorded message players. The equipment needed to place this particular type of call is complex, expensive, and requires continued high-volume use to reap a reasonable return on investment to its owner. The Committee record indicates that most charitable organizations, which are either local or depend largely on locally based companies, do not use this technology.

By incorporating language into the bill that focuses on specific types of solicitation calls, the Committee recognizes that legitimate business uses of autodialers will not be restricted under this bill. For example, a business which utilized autodial calls to alert its employees about delayed work hours due to a snow storm would not be covered, since the purpose of such a call is not to "encourage a purchase" or other covered transaction. The Committee recognizes that situations involving prior existing relationships benefit when technology we serve a useful purpose and eliminate costly labor.

The Committee also notes that automated dialing technology is used by retail stores to alert customers who have previously ordered or purchased merchandise, or customers who have left items for repair, that such items are available for pick-up. This use would not be prohibited under the legislation, even if a secondary, solicitous message is included. The Committee believes that, because the principal purpose of the call was not to generate a purchase, prohibition is not necessary. However,

the Committee intends to include those calls that, while claiming no purchase is necessary, nevertheless introduces new products. In determining the purpose for which a call is made, it is the Committee's intention that the principal purpose of the call should be determinative. A call made principally for a purpose other than to encourage a purchase would not be covered merely because the message contained an incidental reference to a potential sale, rental or investment opportunity.

#### Subsection B. Restrictions on the use of telephone equipment for advertising

**\*7** It shall be unlawful for any person in the United States—

- (1) to conduct unsolicited advertising via facsimile machine, computer, or other electronic device to any telephone number listed pursuant to (c).
- (2) to use automatic telephone dialing systems to deliver, without initial live operator contact, any prerecorded advertisement to a number listed pursuant to (c).
- (3) to use an automatic dialing system to make unsolicited calls to any emergency, public safety, medical, cellular or law enforcement line.
- (4) to use any automatic dialing or facsimile machine that does not comply with subsection (d).
- (5) to send any advertisement via autodialer or facsimile without including clearly the time, date, telephone number, and identity of the business initiating the call.

The Committee intends that the requirements of the section be imposed on the advertiser and not the carriers who transmit the advertisements on behalf of the telemarketers.

#### Subsection C. Compilation of lists of objecting persons

Subsection C(1) directs the Commission to determine the best mechanism to establish a national clearinghouse that will compile and maintain a list of individuals who object either to receiving unsolicited advertising on a facsimile machine or being contacted by an ADRMP with unsolicited advertising telephone calls. The Commission has 180 days following the enactment of H.R. 2921 into law, within which to establish the clearinghouse. In establishing such a mechanism, either through the clearinghouse, or using any alternative as discussed in Section 2(c)(4), the Commission shall provide for the recovery of all costs under this paragraph and, those costs under Section 2(c)(2), from persons obtaining lists for purposes of complying with this section or comparable state law.

Organizations that either notify customers, compile lists of objecting customers, or provide lists to those making unsolicited advertisements via the facsimile machine or telephone while employing automatic dialers, will not be required to absorb costs in conjunction with implementation of this legislation, unless they were using such technology for purposes of unsolicited advertisement as defined herein. The Committee specifically intends that these costs are not to be borne by telephone company ratepayers.

#### Subsection C(2). Notification of subscribers

This section states that common carriers shall give subscribers the opportunity to notify the carrier, in writing, of their objection to receiving unsolicited facsimile advertisements and prerecorded phone solicitations from ADRMPs.

#### Subsection C(3). Regulations

The Commission shall—

- (A) specify the methods by which a customer may give or revoke a notification regarding unsolicited advertising and specify the methods a subscriber may exercise such rights,
- (B) specify the methods by which notifications are collected and transmitted to the national clearinghouse,
- (C) prohibit customers from being charged for such notification,
- \*8** (D) specify the methods by which such lists will be made available to persons desiring to transmit unsolicited advertising,
- (E) specify the frequency by which such lists will be updated and take effect,

- (F) permit States to use the lists to enforce State laws,
- (G) prohibit the use of such lists for any purpose other than compliance with this or similar state laws.

#### Subsection C(4). Alternative mechanism permitted

If the Commission determines that the listing procedure described is not the most efficient or effective method of accomplishing the purpose of the Act, the Commission may, after opportunity for public comment through the Administrative Procedures Act, and after notice to Congress, prescribe such regulations as necessary to implement such alternative mechanism.

#### Subsection D. Technical and procedural standards

Subsection D sets technical standards for facsimile machines manufactured six months after enactment and used for distribution of unsolicited advertising. Facsimile machines must be equipped to identify in the top or bottom margin the time and date sent, an identification of the business sending the advertisement [s] and the telephone number of the sending machine or business. The Commission shall exempt from these standards facsimile machines which do not have the capacity for automatic dialing or interface through a computer.

#### Subsection D(2). Automatic telephone dialing systems

The Commission shall prescribe standards for automatic dialers and facsimile machines, and these standards will require that—

- (A) all recorded messages shall, at the beginning of the message, state clearly the identity of the business initiating the call and shall state during the call the telephone number or address of such business;
- (B) such systems shall, as soon as the called party hangs up, given the technical limitations of the telephone service facilities, disconnect with the called party's line. The Committee record indicates that existing technology permits most lines to disconnect, or release a line, within twelve seconds. As technology progresses, the disconnect requirements should reflect such advances.

#### Subsection E. State law not preempted

The legislation provides that no state law which is more restrictive may be preempted.

#### Subsection F. Schedule of regulations

The legislation requires that the regulations shall be prescribed within 6 months after date of enactment.

#### Subsection G. Effective date

The legislation states that the requirements shall take effect 30 days after the regulations are prescribed.

### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

#### COMMUNICATIONS ACT OF 1934

#### TITLE I—GENERAL PROVISIONS



\* \* \* \* \*

## APPLICATION OF ACT

**\*9** Sec. 2. (a) \* \* \*

(b) Except as provided in [section 223 or 224] sections 223, 224, and 225 and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

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## TITLE II—COMMON CARRIERS

\* \* \* \* \*

## RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING

Sec. 225. (a) Definitions.—As used in this section—

(1) The term “automatic telephone dialing system” means equipment which has the capacity—

(A) to store or produce numbers to be called, using a random or sequential number generator;

(B) to dial such numbers; and

(C) to deliver, without initial live operator intervention, a prerecorded voice message to the number dialed, with or without manual assistance.

(2) The term “telephone facsimile machine” means equipment which has the capacity—

(A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line; and

(B) to receive such signals over such a line and to produce a copy of the transmitted text and images.

(3) The term “telephone solicitation” means the unsolicited initiation of a telephone message, without initial live operator intervention, for the purpose of encouraging a person to purchase, rent, or invest in property, goods, or services.

(4) The term “unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(b) Restrictions.—It shall be unlawful for any person within the United States by means of telephone—

**\*10** (1) to use any telephone facsimile machine or computer or other electronic device to send any unsolicited advertisement to the telephone facsimile machine of any person whose number is listed pursuant to subsection (c) as the telephone number of a person who objects to receiving unsolicited advertisements by telephone facsimile machine;

(2) to use any automatic telephone dialing system to transmit, without initial live operator intervention, any prerecorded telephone solicitation to any person whose number is listed pursuant to subsection (c) as the telephone number of a person who objects to receiving telephone solicitations from automatic telephone dialing systems;

(3) to use any automatic telephone dialing system to make unsolicited calls—

(A) to any emergency telephone line of any hospital, medical physician or service office, health care facility, fire protection, or law enforcement agency; or

(B) to any number assigned to paging or cellular telephone service;  
 (4) to use any telephone facsimile machine or any automatic telephone dialing system that does not comply with the technical standards prescribed under subsection (d); or  
 (5) to use a computer or other electronic device to send an unsolicited advertisement via a facsimile machine unless such person sending the advertisement clearly notes the date and time it is sent and the identity and telephone number of the business initiating the message.

(c) **Compilation of Lists of Objecting Persons.**—

(1) **Selection and operation of listing mechanism.**—The Commission shall compare and evaluate alternative mechanisms for establishing a national clearinghouse to compile a list of telephone subscribers who have submitted objections under subparagraph (A) or (B) of paragraph (2) (or both) and to make that compiled list available. Such comparison and evaluation shall include the solicitation of public comment on such alternative mechanisms and shall include the evaluation of the establishment of the clearinghouse by the Commission or its designee. Within 180 days after the date of enactment of this section, the Commission shall by regulation select the mechanism which it determines will be the most cost effective in carrying out the purposes of this section. Such mechanism shall provide for the recovery, from persons obtaining lists for purposes of complying with this section or comparable State law, of costs incurred under this paragraph.

(2) **Notification to subscribers.**—Each common carrier providing telephone exchange service shall, in accordance with regulations prescribed by the Commission, afford its subscribers for telephone exchange service the opportunity to provide notification in accordance with regulations established under paragraph (3) that such subscriber objects to either or both of the following:

(A) to receiving unsolicited advertisements by telephone facsimile machine; or

(B) to receiving prerecorded, commercial telephone solicitations from automatic telephone dialing systems.

**\*11 (3) Regulations.**—The regulations prescribed under this subsection shall—

(A) specify the methods by which a subscriber shall be informed by a common carrier of the right to give or revoke a notification of an objection under subparagraph (A) or (B) (or both) of paragraph (2) and specify the methods by which such right may be exercised by the subscriber;

(B) specify the methods by which such objections shall be collected and transmitted to the national clearinghouse established by the Commission under paragraph (1);

(C) prohibit any residential subscriber from being charged for giving or revoking such notification or for being carried on a list compiled under this section;

(D) specify the methods by which such list shall be made available to any person desiring to transmit unsolicited advertisements by telephone facsimile machine or to use an automatic dialing system to transmit telephone solicitations, and the costs to be recovered from such persons;

(E) specify the frequency with which such lists will be updated and specify the method by which such updated list will take effect for purposes of compliance with subsection (b);

(F) be designed to permit and encourage States to use the listing mechanism selected by the Commission under paragraph (1) for purposes of administering or enforcing State law; and

(G) prohibit the use of such list for any purpose other than compliance with the requirements of this section or any similar State law and specify methods for protection of the privacy rights of persons whose numbers are included in such list.

(4) **Alternative mechanism permitted.**—If the Commission, on the basis of its investigation during the rulemaking proceedings required for purposes of this subsection, determines that the listing mechanism required by this subsection is not the most efficient, effective, and economic means of accomplishing the purposes of this subsection, the Commission shall consider alternative mechanisms to accomplish such purposes. If the Commission determines that an alternative mechanism will provide equivalent protection of telephone subscriber privacy rights in a more efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers, the Commission shall, after notice and opportunity for comment thereon and after 90 days notice to the Congress, prescribe such regulations as are necessary to implement such alternative mechanism.

(d) **Technical and Procedural Standards.**—

(1) **Telephone facsimile machines.**—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which—

(A) is manufactured after 6 months after the date of enactment of this section; and

(B) is used for the distribution of unsolicited advertising,

be equipped to identify, in a margin at the top or bottom of each transmitted page, the date and time sent, an identification

of the business sending the advertising, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 18 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

**\*12** (2) Automatic telephone dialing systems.—The Commission shall prescribe technical and procedural standards for automatic telephone dialing systems that are used to transmit any prerecorded telephone solicitations. Such standards shall require that—

(A) all recorded messages (i) shall, at the beginning of the message, state clearly the identity of the business initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business; and

(B) such systems will, as soon as is technically practicable (given the limitations of the telephone exchange service facilities) after the called party hangs up, automatically create a disconnect signal or on-hook condition which allows the called party's line to be released.

(e) State Law Not Preempted.—Nothing in this section or in the regulations prescribed pursuant to this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, either or both of the following:

(1) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; and

(2) the use of automatic telephone dialing systems to transmit prerecorded telephone solicitations.

(f) Schedule for Promulgations of Regulations.—The regulations required by this section shall be prescribed within 6 months after the date of enactment of this section.

(g) Effective Date of Requirements.—The requirements of this section shall take effect 30 days after the date that such regulations are prescribed.

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