

**Before the
Federal Trade Commission
Washington, D.C. 20580**

In the Matter of)	
)	
CAN-SPAM Act Rulemaking)	Project No. R411008
)	
)	

COMMENTS OF VERIZON¹

As a leader in protecting the privacy of its customers, Verizon strongly supports efforts to stop unsolicited and misleading commercial e-mail. At the same time, electronic communication is an important and useful tool for consumers to obtain information. In clarifying and interpreting the CAN-SPAM Act, the Commission must balance the privacy rights of consumers with the right of businesses to use e-mail to communicate critical, true and non-misleading information to consumers. In doing so, the Commission should provide enough flexibility in its rules to enable legitimate businesses that use different systems, processes and business plans to comply with the Act's opt-out requirements. While some businesses may easily meet the proposed three business day period for honoring an opt-out request, others, including Verizon, are challenged to meet even the current ten-business-day period. Indeed, the operational

¹ These comments are filed on behalf of Verizon Internet Services Inc. and GTE.Net LLC d/b/a Verizon Internet Solutions (which operate under the trade name Verizon Online), and Verizon's affiliated local exchange carriers and long distance companies identified in attachment A hereto (collectively referred to herein as "Verizon"). Some of these companies are service providers subject to regulation under the Communications Act of 1934, as amended, and therefore are subject to the enforcement jurisdiction of the Federal Communications Commission, not the Federal Trade Commission. See Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699, § 7(b)(10) (2003) ("CAN-SPAM Act")

difficulties of implementing opt-out requests facing most companies today dictate that the Commission should *increase* the time allowed to honor opt-out requests, not decrease it. In addition, the Commission should clarify that the proposed rules do not prevent a company from requiring a customer to sign into his or her account with a User ID and password in order to elect their opt-out preferences.

I. The Commission Should Expand, Not Shorten, The Time Allowed To Honor Opt-Out Requests.

As today's economy relies more and more on technology to conduct commerce and business, the ability to communicate with customers via electronic mail becomes increasingly more important. Verizon, like other legitimate businesses, uses e-mail to communicate critical, true and non-misleading information to consumers, including rendering bills and current account status, updating security information, updating the availability of a pre-requested service, offering innovative, custom-tailored services, and providing newsletters regarding services. Verizon recently announced that more than 10 million customers have registered to use *www.verizon.com* for everything from product research, to booking repair visits, to activating calling services.² Because electronic communication has become integral to Verizon's service and identity, Verizon goes to great lengths to ensure that opt-out requests it receives from its existing and potential consumers are expeditiously and carefully honored, not only to comply with the requirements of the Act, but also to meet and exceed its customers' expectations.

Although a substantial number of commenters advocated either retaining the ten-business day rule or "lengthening the deadline for effectuating an opt-out request, citing complex business arrangements, the use of third-party marketers, and the maintenance of multiple e-mail databases

² Verizon June 20, 2005 News Release, "*E-Commerce Works: Just Ask 10 Million Verizon Customers*", available at <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=91978>.

as the reasons for doing so,” the Commission stated that the “record suggests that nearly instantaneous processing of a recipient’s request not to receive future e-mail messages can be accomplished without an undue burden.”³ This statement, however, is not consistent with existing business conditions. Indeed, even though Verizon’s views regarding protection of customers from unwanted commercial e-mail are aligned with the goals of the Commission and those stated in the Act, the complexities involved with maintaining an effective opt-out program dictate that the time period within which to honor opt-out requests be longer, not shorter.

The complexities and difficulties of effectuating opt-out requests are substantial for a company like Verizon. Although opt-out requests can be recorded in a short amount of time, it takes *significantly* more time to incorporate those requests into mailing lists appropriate for use by multiple product or business lines of an organization in connection with their business needs.

As MBNA correctly noted (at 15):

It is not simply a matter of adding the request to a list or database, which can be done within one or two business days. But this suppression list or database must be processed against any organization’s list that may be conducting an e-mail campaign to its customers or members. It is this part of the process that makes the 10-business-day rule unrealistic.

A. Verizon’s Opt-Out Process

Verizon agrees that even ten business days is simply too short to properly effectuate opt-out requests into a mailing list. For a company like Verizon that has millions of customers, offers diverse products and maintains ongoing marketing campaigns with multiple business partners and third party vendors, the task is far more complex than for companies that may utilize only a single database or have simpler product offerings or corporate structures and

³ Federal Trade Commission, Definitions, Implementation and Reporting Requirements Under the CAN-SPAM Act, 70 FR 25426, 25442 (2005) (“*NPRM*”).

communication needs.⁴ In short, the Commission should not gravitate to the lowest common denominator where all business entities must meet the same standard. Clearly this is not a “one size fits all” situation.

1. Creation of Verizon’s Opt-Out Lists: Verizon offers customers and e-mail recipients a variety of ways to opt out of receiving further electronic communications. Depending on whether the e-mail recipient is a prospective or existing customer (and if the latter, the type of customer he or she is (*e.g.*, a local telephone service customer who has registered to receive bills electronically or a DSL customer that has been given a verizon.net account with multiple mailboxes)), e-mail recipients may opt out by: i) clicking on the “unsubscribe” link contained in the e-mail; ii), signing onto their personal account through Verizon’s corporate website at *www.verizon.com* and indicating that they do not wish to receive commercial mail; iii) visiting the Verizon Online Preference Center accessible through *start.verizon.net*; iv) replying to a commercial e-mail sent by a Verizon employee that they do not wish to continue receiving commercial e-mail; v) submitting a request on Verizon’s privacy page in the “Contact Us” section of the Verizon websites; or vi) going directly to <http://www22.verizon.com/forhomedsl/unsubscribe/remove.asp?email=> and inputting their e-mail address. These opt-out alternatives are available to Verizon e-mail recipients 24 hours a day, seven days a week. Verizon provides them as a service to its customers and to make the opt-out process as convenient as possible.

The opt-out files from these different source systems are downloaded every week and are sent to a vendor who manages and consolidates the opt-out list subject to strict confidentiality

⁴ Go Daddy and other commenters apparently are able to comply with op-out requests in only “a few seconds.” However, even with this capability, Go Daddy has suggested that five business days is the preferred length of time for acting on a opt-out request, and “recommend[s] that an additional five (5) days be given to process an opt-out request” if a third party is used to actually send the e-mails. Go Daddy at 4, 6.

agreements. The opt-out files that are derived from the Preference Center and other sites that contain a menu of choices will include opt-in as well as opt-out requests. Together, these files contain over four million records every week. From these records, Verizon's agent vendor sends e-mail addresses that contain a Verizon domain back to Verizon for conversion into Verizon Online User IDs. These User IDs and all of their associated e-mail addresses are added back to the opt-out list and to their history file. All of the data is further validated by the vendor to ensure that the e-mail addresses are "bona fide" addresses and that they are in proper form. The vendor will also make minor corrections to the e-mail addresses where necessary and apparent (e.g., to delete errant spaces), but will otherwise not change the substance of what was submitted. New opt-outs are added to the opt-out file and opt-ins that supersede prior opt-out requests are deleted from the existing opt-out file. Duplicates are eliminated and the data is ultimately placed in a common form and consolidated into a single list.

The creation of the opt-out list typically requires two full business days to be completed; if delivery of any of the opt-out sources is delayed, this process may take longer than 2 days. Once a consolidated opt-out list is finalized, the vendor archives the list and distributes it to user groups with the list expiration date clearly indicated. The expiration date is no later than 10 business days from the day the opt-out lists were first pulled to ensure compliance with the Act's current requirements.

2. Creation of Verizon Mailing Lists: The opt-out list must next be integrated with an e-mail list that will be used in a marketing communication. There are numerous tasks that are involved with generating an e-mail list. First, unique criteria must be identified to determine the target base for the specific campaign. Instructions are then written into the computer code to generate a list of addresses that meets the criteria. Because of the unique nature of many

campaigns, the process of identifying and coding the targeting criteria is a manual one. Depending on the complexity of the campaign, this process can sometimes, but not always, be started before the opt-out list is received. Additional data elements or attributes, such as demographics, purchase history and other data are added as applicable to generate a list that meets the business unit's target audience. As part of this process, the list is "scrubbed" against the current opt-out list, and if any e-mail addresses from the opt-out list are found on the mailing list, those addresses are suppressed or eliminated from the mailing list. Tracking processes are inserted into the list to support post-campaign analyses and to provide a record for customer or other complaints.

The e-mail list is then subjected to Verizon's internal quality control and quality assurance reviews. Here, a separate review takes place to ensure that the computer code written accurately reflects and captures the targeting criteria originally requested by the business. The review also confirms that opt-ins and data from other sources comply with all other applicable regulatory obligations (*e.g.*, use of CPNI and domain name suppression). A sample of this output is also reviewed for quality assurance. Once these reviews are concluded, the list and samples are forwarded to the business/marketing unit for approval, along with a report setting forth the steps that led to the ultimate output list, the number of files that were suppressed and counts broken down into relevant categories (*e.g.*, by state or some other criteria). Clearly identified on this report is the number of days remaining before list expiration.

The manual processes and attention to quality controls that Verizon has put in place mean that the generation of mailing lists is often compressed into only five business days to meet the Commission's current ten-day deadline. Adding further complexity and time pressure is the fact

that there are multiple lead lists being created simultaneously throughout the company, each of which must be tracked and monitored for compliance with the Act and other legal requirements.

3. Campaign Upload and Launch: Once a mailing list is generated and approved (with appropriate opt-outs suppressed), there are still a number of steps that must be taken, including coding and sorting the list, segmenting the list for test purposes, quality control procedures, and approval processes before the e-mail can actually be sent. Verizon's marketing group works with the relevant Verizon business groups and third party advertising and e-mail vendors to coordinate these efforts and launch the e-mail marketing campaigns. These parties along with Verizon's business team will conduct an initial review of the data and perform further segmentation of the list for testing or other purposes. The advertising agency will send the creative elements and links to the e-mail vendor for insertion into the e-mail. The e-mail vendor will perform code reviews on different format versions of the e-mail (HTML and text versions), set up the campaign, upload creative elements and links and merge the e-mails with the addresses. When the e-mail campaign is fully set up, the e-mail vendor conducts its own internal quality assurance checks and external tests with pre-arranged e-mail recipients. If any problems are found from these tests, the parties will make the appropriate fixes and obtain final approvals. The e-mail campaign is then, finally, ready for launch.

In summary, the current timeline from collection of an opt-out request to launching an e-mail campaign with a properly scrubbed opt-out list is as follows:

Day 1	E-mail opt-out/in requests collected from various sources and sent to Verizon's agent vendor for processing
Day 2	Verizon's vendor(s) edits, validates, removes duplicate addresses, consolidates and archives consolidated opt-out list; consolidated opt-out list sent to the business unit with an expiration date for the list

Day 1-5	Campaign management and marketing works with business units to develop campaign, identify targeting criteria, write codes; mailing lists are scrubbed against opt-out list; quality control and assurance checks performed; lists loaded into tracking process; approvals obtained; list sent to e-mail vendor for preparation and launch
Day 5-10	E-mail vendor codes and sorts lists; uploads creative elements and links; sets up campaign; conducts own quality control checks; sends external test e-mails to approved recipients; obtain all final approvals; and launches the e-mail campaign.

It is important to understand that an approved opt-out list must remain valid during the subsequent mailing list creation and the campaign upload and launch phases of campaign implementation; otherwise, the entire process must start again. If the approved opt-out list changes in the middle of this process (for example, under a three-business day rule), the process cannot continue and must be restarted to integrate the new list of opt-out requests, severely curtailing the ability to conduct any targeted e-mail campaigns.

Based on Verizon's experience, a conscientious company following appropriate guidelines and controls faces serious challenges in meeting even the current ten-day period under the Act for effectuating opt out requests. Indeed, the ten-day deadline has caused Verizon to redo e-mail campaign preparations or to delay their launch, resulting in a delay of information to customers. Shortening the period by even one day would create an extraordinary burden on companies attempting to follow the letter and spirit of the law.

B. The Commission Should Expand The Period of Time Allowed Within Which To Effectuate Opt-Out Requests.

Verizon is not alone in finding that ten business days is not enough time to effectuate opt-out requests. The Commission has noted that a substantial number of commenters advocated

lengthening the deadline for effectuating opt-out requests because of complex arrangements, multiple databases and the use of third party vendors. *NPRM* at 25443. The Commission also noted the most commonly suggested period of time was thirty-one days, which corresponds with the period of time established by the Telemarketing Sales Rule for allowing telemarketers to scrub their telemarketing lists against the National Do-Not-Call Registry.⁵ *Id*) Verizon agrees that thirty-one days is an appropriate length of time in which to honor opt-out requests. Not only is this amount of time understandable to the public because it is consistent with the standard established by the Do-Not-Call Registry, it will give all types of businesses employing varied opt-out methods sufficient time to comply. This additional time will benefit both larger businesses with complex business arrangements and multiple databases as well as smaller businesses with limited staff and resources.⁶

Conversely, the Commission should *not* shorten the period, as it proposes, from ten business days to three business days. Such a contraction in the time period would impose significant and unreasonable burdens on companies like Verizon that have larger and more complex marketing programs or on companies whose resources are limited. First, given the existing infrastructure constraints, Verizon would likely be precluded from conducting targeted e-mail campaigns altogether. As described above, it would be virtually impossible for Verizon to process opt-out requests, match them against mailing lists, put them into usable marketing campaigns and perform the types of quality control checks that Verizon does within three business days. The result would be the creation of useless opt-out lists, elimination of a powerful marketing tool in today's economy and lost business opportunities for Verizon and other

⁵See, Federal Trade Commission, *Telemarketing Sales Rule*, 69 FR 16368 (2004).

⁶See *NPRM* at 25443 (acknowledging comments from small businesses that ten-business days for opt-out is too burdensome).

companies. It would also mean that companies would be unable in most instances to communicate with those customer that *want* to receive information by e-mail, caused by the fact that e-mail lists may not be generated with sufficient certainty of compliance with the three-day opt out processing requirement.

Second, even if Verizon were able to satisfy itself that reliable and compliant e-mail lists could be generated within three business days, such a turn-around time would require Verizon to undertake significant and costly changes to its systems infrastructure. These changes would involve not only redesigning and potentially restricting the available methods by which opt-out requests may be made, but a complete restructuring of Verizon's relationships with its third party vendors, who themselves may have significant structural limitations affecting compliance. While the costs to effect such system infrastructure change cannot be estimated at this time, they unquestionably will be substantial and would include additions to staff to conduct all of the steps identified above in less than half the time currently allowed.

Third, a compressed timeline could jeopardize both Verizon and vendor quality controls, a situation unacceptable to Verizon. Reduced quality controls may also affect the quality of the marketing campaign, thus increasing the potential for customer complaints and potentially compromising Verizon's brand, brand awareness and consumer confidence. In short, a three business day opt-out rule effectively will eliminate the ability of many legitimate businesses to communicate with their customers by electronic mail.⁷

⁷ This result would also have First Amendment implications because the restriction would affect a constitutionally protected medium of communication for businesses and their customers. *See, e.g., Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, 790 n.5 (1988) (finding First Amendment implicated where "effect of the statute is to encourage some forms of solicitation and discourage others").

In contrast to the undue burdens that would be imposed on Verizon and other businesses with a three-business day opt-out rule, there is no evidence that legitimate businesses have abused a longer period within which to honor requests. Despite alleged fears that a ten-day or longer period allows businesses to legally “mail-bomb” recipients, the Commission has noted that these concerns are not supported by any factual evidence that these practices actually occur, “or that these practices would be eliminated by a shorter processing period.” *NPRM* at 25443. Verizon does not target recipients who submit opt-out requests for additional mailings prior to the end of the ten-day period. In addition, many consumers actually want to continue receiving commercial e-mails and the ability to select the types and the companies from which to receive them. If the Commission adopts a three business day opt-out rule, it would severely limit Verizon’s ability to use e-mail as a communication tool and cause harm to those consumers as well.

II. The Commission Should Clarify That The Act Permits Senders To Require A User ID and Password In Order To Choose E-Mail Preferences.

The Commission has proposed to adopt Section 316.5 to prohibit the imposition of any fee, any requirement to provide personally identifying information (beyond an e-mail address), or any other obligation as a condition for accepting or honoring a recipient’s opt-out request. *NPRM* at 25444. This proposed rule further prohibits a sender from requiring recipients to visit more than a single Internet web page in order to submit such request. Verizon agrees that senders should not be permitted to condition the acceptance of an opt-out request on payment of a fee, or to require recipients to provide more information *than is reasonably necessary* to effectuate the opt-out request. However, the Commission should clarify that this proposed rule does not prohibit senders from requiring users of their websites to log in using their User ID and

password or from requiring users to visit a “preferences” page in order to choose the types of e-mail they may or may not wish to receive.

Section 7704(a)(3)(B) of the CAN-SPAM Act specifically provides that senders may comply with the Act by “providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.”

Verizon offers this option to registered users of its preference selection websites accessible through *www.verizon.com* and *start.verizon.net*. When Verizon sends commercial e-mail to a recipient who is a registered user, an opt-out link is provided that directs the user to the “My Profile” or “Preferences” section of those websites. If the customer has not set up their browser to remember their User ID and password and automatically log in to their accounts, they will instead be directed first to the sign in page where they will need to supply their User ID and password. After logging in, the user is then be directed to the “My Profile” or “Preference Center” pages, at which point users may elect opt-out or opt-in preferences from among a menu of choices on a single page.

The requirement to sign in with a User ID and password serves two very important functions. First, User IDs and passwords are necessary as a security feature. Because the Preference Center provides the ability for the recipient to choose the type of communication he or she wishes to receive in the future, the requirement of a secure password ensures that the person making those selections is the true owner of the e-mail account. Failure to include any form of security would open users to the prospect of receiving e-mail they never elected to

receive, or to not receiving e-mail they desire to receive. Second, each registered Verizon Online e-mail user may create up to nine different e-mail accounts, each associated with that unique User ID. By requiring that the user sign in and modify the preferences in the Preference Center, Verizon can ensure that the *customer's* preference is recorded and effectuated for each of his or her addresses. Without this requirement, customers who opted-out using one e-mail address may still receive commercial communications at their other e-mail addresses. This can cause confusion and frustration for those who believed they had opted-out. Verizon's policy thus is to apply the selected preferences to all of the customer's e-mail addresses so such confusion can be avoided.

Finally, Verizon seeks clarification that proposed Section 316.5 will not prohibit the location of the "menu" of opt-out/in choices in the "Preference Center" or "My Profile" page of its websites. Proposed Section 316.5 states that a sender may not require that a recipient take any other steps, other than "visiting a single Internet web page," in order to submit a request not to receive future commercial electronic mail messages from the sender. This rule may be interpreted to require that a recipient not visit more than one page in order to be able to submit their request, for example, by just clicking "unsubscribe". In order to reach the "My Profile" or "Preference Center," Verizon's registered users are first required to sign in for security reasons, and then to click to enter the preferences page from the "My Account" homepage of the website. Although all of the user's opt-out choices are contained on a single Internet web page, including the option not to receive any commercial electronic mail messages from Verizon, users may have to visit more than a single page to get there. Locating the "Preference Center" and "My Profile" within the "My Account" section of the website is prudent from a security standpoint and makes logical and business sense. It is also what users have come to expect and neither is burdensome

nor interferes with the opt out election process. Verizon therefore requests that the Commission clarify that doing so will not violate Proposed Section 316.5.

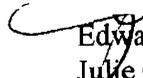
Conclusion

For the reasons stated above, the Commission should expand the time required to honor opt-out requests from ten business days to thirty-one days. In addition, the Commission should clarify that the proposed Section 316.5 does not prohibit entities from requiring a User ID and password or going to the “preferences” section of a user’s account in order to effectuate an opt-out request.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local and long distance exchange carriers affiliated with Verizon Communications Inc. These are:

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance
Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
NYNEX Long Distance, Inc. d/b/a Verizon Enterprise Solutions
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon Select Services Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.