

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

CG Docket No. 02-278
CC Docket No. 92-90

FURTHER REPLY COMMENTS OF VERIZON

The comments in response to this Commission's further notice demonstrate why it is necessary and in the public interest for the federal DNC regime to preempt inconsistent state systems. A number of commentors expressly urge preemption.¹ But, more interestingly, even the comments of an opponent of preemption illustrate why preemption is in the public interest.

The New Jersey Ratepayer Advocate suggests that "consumers should be able to register once by contacting either the FCC, the FTC or the state's Do Not Call registry."² This would surely be convenient for consumers, but would work only if registration with all three DNC registries would have the same effect — that is, if the particulars of all three programs were the same. If they are not the same, then the consumer who is aware of one of the registries and wants the protections of that registry could call another registry administrator and get the different protections that the second registry provides.

The FTC's comments also illustrate the need for preemption by this Commission. The FTC reports that it "is working with the states to develop a single, national do-not-call registry."³

¹ E.g., ACLI at 4; Bankone at 2; DIRECTV at 3; Intuit at 2-4; SIA at 2; SIIA at 2; Sprint at 2-3.

² NJ Ratepayer Advocate at 1.

³ FTC at 16.

Significantly, it does not report that all the states that now have DNC registries have agreed to fold them into the national system. And it does not report that the other states have stopped their consideration of new state registries, and this consideration is continuing in a number of states. In fact, just last week, one more state enacted do-not-call legislation.⁴ The FTC goes on to say that it will take up to three years for the “harmonization” it hopes will occur, even in those states that it believes have agreed to it.⁵ Verizon expects that in the absence of federal compulsion this transition will take longer than the FTC predicts, if it is ever completed.

The Tennessee Regulatory Authority says, “It is contrary to federal law to conclude that Congress only intends for one national DNC registry to be established and that it be maintained by a federal agency”⁶ and that the TCPA “expressly provides that federal law regulating telephone solicitations is not intended to preempt state law that attempts to provide more protections than exist under federal law.”⁷ TRA is wrong on both counts. Section 227(e)(2) refers to “a single national database” — precisely what TRA says Congress did not intend — and the House committee noted “state laws will be preempted” by Commission action.⁸

Finally, one commentor makes an argument so outrageous that it deserves note, even though the Commission would have to turn into Lewis Carroll’s Queen of Hearts⁹ in order to accept it. WorldCom asks the Commission to rule that it has an “established business

⁴ Montana will establish a DNC list by the end of this year. *Communications Daily*, May 15, 2003, at 8.

⁵ FTC at 17.

⁶ TRA at 3.

⁷ TRA at 2.

⁸ H.R. Rep. No. 102-317, 102^d Cong., 1st Sess., at 21 (1991).

⁹ A word “means just what I choose it to mean — neither more nor less.” Carroll, Lewis, *ALICE THROUGH THE LOOKING GLASS*, chap. 6.

relationship” with every telephone subscriber in the country, including those with whom it does not now and has never had any sort of relationship at all — in WorldCom’s words, that all “consumers should be deemed to have an established business relationship with” WorldCom.¹⁰ Such a construction is at odds, of course, with the plain meaning of the words “established business relationship” — there has to be some sort of “relationship.” It is inconsistent with the expressed intent of Congress in that “the test to be applied must be grounded in the consumer’s expectation of receiving the call,”¹¹ And, of course, it is also inconsistent with the way the Commission has already construed this term to require that an established business relationship is one that is “formed by a voluntary two-way communication” between the consumer and the business.¹² WorldCom’s request that the Commission create a “virtual” established business relationship must be rejected.

¹⁰ WorldCom at 6.

¹¹ H.R. Rep. No. 102-317, 102^d Cong., 1st Sess., at 15 (1991).

¹² 47 C.F.R. § 64.1200(f)(4).

Conclusion

This Commission should adopt the FTC's rules as its own, with only those changes that are required to conform to the TCPA, and should preempt inconsistent state DNC rules.

Respectfully submitted,


John M. Goodman

Attorney for Verizon

1300 I Street, N.W.
Washington, D.C. 20005
(202) 515-2563
john.m.goodman@verizon.com

Michael E. Glover
Edward Shakin
Of Counsel

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