

7/27/03



CHAIRMAN

Federal Communications Commission

Washington, D.C
August 20, 2003

REC'D
SEP 11 2003

The Honorable Charles (Chip) Pickering
U S House of Representatives
229 Cannon House Office Building
Washington, D C 20515

Dear Congressman Pickering:

Thank you for your July 18, 2003, letter expressing concerns about application of the Commission's recently adopted national do-not-call rules to intrastate calls. The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements. The Commission's revisions to the TCPA are in keeping with the National Association of Attorneys General's position in that the Commission did not preempt state do-not call rules, or preclude the states from enforcing these laws.

As your letter indicates, however, a few states have adopted exemptions from state do-not-call programs that are not recognized under the federal do-not-call regulations. After careful review of the extensive record generated in this proceeding, the Commission concluded that application of such less restrictive state exemptions directly conflicts with federal objectives in protecting consumer privacy rights under the TCPA. Although states traditionally have jurisdiction over intrastate calls, Congress enacted the TCPA and amended Section 2(b) of the Communications Act of 1934 to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. While Section 2(b) of the Communications Act of 1934 provides the Commission with authority over both intrastate and interstate telemarketing calls under the TCPA, the FTC's jurisdiction does not extend to intrastate calls. Therefore, we believe that the Commission's decision was a matter not of maintaining consistency with the FTC's rules, but of the agencies' jurisdictional differences.

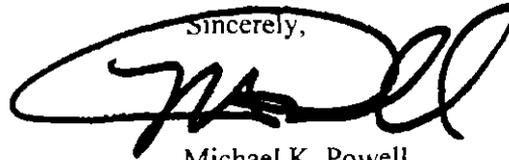
I would also note that while numerous states have chosen to enact state do-not-call lists, many states have not adopted any do-not-call rules. The Commission's authority to enforce both interstate and intrastate violations of the TCPA in these states is essential to protect consumer privacy. In addition, because the TCPA applies to both interstate and intrastate communications,

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the minimum requirements for compliance are therefore uniform throughout the nation, reducing the potential for consumer confusion, and the regulatory burdens on the telemarketing industry

I appreciate both your support for the federal do-not-call list and its rules and regulations, and the leadership demonstrated by the State of Mississippi in enacting its state telemarketing laws. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", enclosed within a large, loopy oval shape.

Michael K. Powell



CHAIRMAN

Federal Communications Commission

Washington, D C.
August 20, 2003

Handwritten initials or signature in the top right corner.

The Honorable Roger Wicker
U S. House of Representatives
2455 Rayburn House Office Building
Washington, D C 20515

Dear Congressman Wicker:

Thank you for your July 18, 2003, letter expressing concerns about application of the Commission's recently adopted national do-not-call rules to intrastate calls. The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements. The Commission's revisions to the TCPA are in keeping with the National Association of Attorneys General's position in that the Commission did not preempt state do-not-call rules, or preclude the states from enforcing these laws.

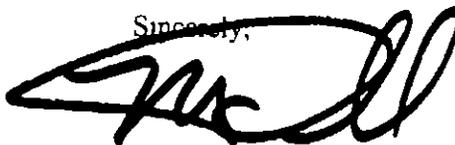
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Michael K. Powell



CHAIRMAN

Federal Communications Commission

Washington, D.C.

August 20, 2003

The Honorable Bennie G. Thompson
U.S. House of Representatives
2432 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Thompson.

Thank you for your July 18, 2003, letter expressing concerns about application of the Commission's recently adopted national do-not-call rules to intrastate calls. The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements. The Commission's revisions to the TCPA are in keeping with the National Association of Attorneys General's position in that the Commission did not preempt state do-not-call rules, or preclude the states from enforcing these laws

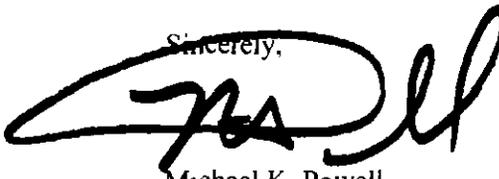
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Michael K. Powell

Congress of the United States

Washington, DC 20515

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July 18, 2003

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The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell,

On June 26, 2003, the Federal Communications Commission (FCC) announced final amendments to their Telemarketing Rule. We are disappointed by the Commission's decision to extend the provisions of the Federal Trade Commission's (FTC) National Do-Not-Call Rule to intrastate calls

When Congress enacted the Do-Not-Call Implementation Act, it directed the FCC to finalize its rule to maximize consistency with those promulgated by the FTC. The FTC rule applies only to interstate telemarketing activity and do not pre-empt state laws. By taking this approach, the FTC committed to work with the states to ensure coordinated enforcement efforts. Unfortunately, the FCC's provisions extending the interstate rule pre-empt state law. This is a significant change and largely unexpected. Thirty-seven states have existing do-not-call laws which they carefully crafted to protect consumers while simultaneously considering the economic impact on key industries in their state. As a result of the FCC rule, these states will be subject to the federal law, and professionals who engage in limited and legitimate telemarketing within these same states will be forced to comply with the more restrictive federal law.

The Mississippi State Legislature passed a bill earlier this year that placed restrictions on telemarketing calls. This legislation addressed the public's concern of invasive phone calls while providing limited exemptions to important small business groups whose businesses are valuable parts of the Mississippi economy. The Mississippi Legislature determined that real estate licensees, insurance agents, and small town bankers should be allowed to call their neighbors to discuss business and provide valuable information. Unfortunately, the FCC rule supersedes our state law and blocks these important small businesses from a vital source of their business. The impact of this rule on the small business community in our state could be devastating.

We would like to call your attention to the comments of the National Association of Attorneys General (NAAG), which you identify in your final rule. "State regulators generally support a national database provided that it does not preempt state do-not-call rules or preclude the states from enforcing these laws" (NAAG comments at 8-13). Attorneys General serve as legal counselors to state government agencies and legislatures.

and as representatives of the public interest. As such, we believe their comments should have received greater consideration

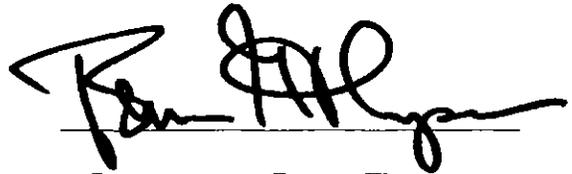
We urge you to amend the Telemarketing Rule by restricting its applicability to interstate telemarketing activities. States should remain responsible for enactment and enforcement of their own laws in order to meet the needs of their constituents

Thank you in advance for your attention to this matter. We look forward to working with you to resolve this issue.

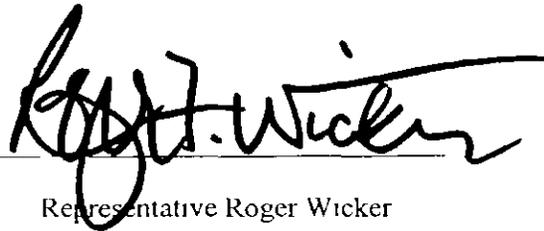
Sincerely,



Representative Chip Pickering



Representative Bennie Thompson



Representative Roger Wicker