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02-278

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 25 2003

Control No. 0302690/aw

Ms. Rebecca Keown
114 Hillside Street
Odenville, AL 35120

RECEIVED

OCT 10 2003

Dear Ms. Keown:

Federal Communications Commission
Office of the Secretary

Thank you for your letter to Senator Richard Shelby regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Senator Shelby forwarded your letter to the Commission and requested that we respond directly to you.

Specifically, you express concern that anyone making a telephone solicitation call must provide his or her name, the name of the person or entity or whose behalf the call is being made, and a telephone number or address at which that person or entity may be contacted. You also express concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. You indicate that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive calls and faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving

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hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

Information regarding "telephone solicitations" is also enclosed. We appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,



K. Dane Snowden
Chief

Consumer & Governmental Affairs Bureau

Enclosures

cc: The Honorable Richard C. Shelby

RCS/sfm
Enclosure

Richard Shelby

Sincerely,

I have notified my constituent to expect a timely reply directly from you.
Please review the enclosed and address the concerns raised.

Enclosed, please find a copy of correspondence I received from Rebecca Keown.

Dear Ms. Wilkerson:

Ms. Sheryl J. Wilkerson
Office of Legislative Affairs
Federal Communications Commission
Room 8-C453
445 12th Street, S.W.
Washington, D.C. 20554

September 4, 2003

United States Senate
WASHINGTON, DC 20510-0103

RICHARD SHELBY
ALABAMA
CHAIRMAN - COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
COMMITTEE ON APPROPRIATIONS
CHAIRMAN - SUBCOMMITTEE ON TRANSPORTATION
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(205) 759-5047

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(Palky)
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RCS/sfm

Richard Shelby

Sincerely,

I have contacted the FCC on your behalf and have asked them to respond to your concerns. You should expect a reply to your concerns directly from the agency in a timely manner. Please do not hesitate to contact me about this or other matters in the future.

Thank you for taking the time to contact me regarding your concerns.

Dear Ms. Keown:

Ms. Rebecca Keown
114 Hillside Street
Odenville, Alabama 35120



September 4, 2003

United States Senate
WASHINGTON, DC 20510-0103

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Shelby, Senator (Shelby)

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From: REBECCA KEOWN [BECKYKEOWN@AOL.COM]
Sent: Friday, August 15, 2003 1:51 PM
To: Shelby, Senator (Shelby)
Subject: TCPA Revisions

RECEIVED

REBECCA KEOWN
114 HILLSIDE ST
ODENVILLE, AL 35120

August 15, 2003

The Honorable Richard C. Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510-0103

Dear Senator Shelby:

I am a constituent in your district and a professional in the credit and collection industry. I am extremely concerned about the Federal Communication Commission's (FCC) recently revised rules implementing portions of the Telephone Consumer Protection Act of 1991 that impact the use of telephones, automated telephone equipment and fax machines. The FCC changes will be effective on August 25 and will severely hamper my local business.

The Fair Debt Collection Practices Act (FDCPA) prohibits collectors from identifying themselves to anyone other than the individual owing the debt. The new FCC rules, however require that any artificial or prerecorded telephone messages clearly state the identity of the business, individual or other entity responsible for initiating the call.

Collection professionals use sophisticated telecommunication equipment and software programs to ensure compliance with the FDCPA's third-party disclosure requirement. The new rules are inconsistent with the FDCPA and the industry's operating procedures.

Furthermore, the newly revised rules place an unreasonable restraint on my business by prohibiting me from sending promotional faxes, without written consent, to even my best and oldest customers. An established business relationship should not be subject to such an unnecessary burden.

These FCC rules present a compliance issue for the credit and collection industry, burden business-to-business communication and may open the doors for frivolous lawsuits. To solve this problem, Congress must intervene and provide legislative relief in the form of an amendment to the TCPA. Specifically, Congress should amend the Act to provide an exemption from the rules for communications, sent via facsimile, between businesses and persons with whom they have an established business relationship. This exemption is needed to allow small businesses, such as my own, to communicate with valued customers about products and services using a fax machine.

Further information is available from ACA International, the Association of Credit and Collection Professionals at www.acainternational.org.

Please support our efforts to undo the unintended consequences produced by the FCC amended rules. This is a very important issue to my business and I look forward to your response.