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

CGB

02-278

OCT 20 2003

Control No. 0302947/kah

The Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington, D C 20510

RECEIVED

OCT 28 2003

Dear Senator Nickles.

Federal Communications Commission
Office of the Secretary

Thank you for your letter on behalf of your constituent, Richard Rush, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, he expresses concern that, "without the proper input from the business and association community," the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Mr. Rush indicates that requiring such express permission to be in writing will place onerous burdens on businesses.

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 faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving 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.

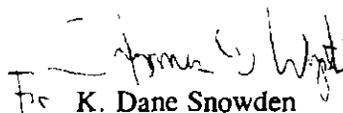
No. of Pages 2
LHA AD 02

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.

We appreciate Mr. Rush's comments and have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,



For K. Dane Snowden
Chief

Consumer & Governmental Affairs Bureau

Enclosures

0/03/03 FRI 13:04 FAX

*CGP
Do not call
2947*

OKLAHOMA SENATOR
DON NICKLES

133 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3602
PHONE: 202-224-5754
FAX 202-224-6008

DATE: 10-3-03

TIME: _____

TO: Paul Jackson

FAX: _____

FROM: Jennifer Quinlan

FOLLOWING THIS COVER THERE IS/ARE 2 PAGE(S)

IF YOU HAVE QUESTIONS, PLEASE CALL 202/224-5754 THANK YOU

COMMENTS _____

<http://www.senate.gov/~nickles>

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DON NICKLES
OKLAHOMA

United States Senate
WASHINGTON, DC 20510-3602

COMMITTEES
BUDGET, CHAIRMAN
FINANCE
ENERGY AND NATURAL
RESOURCES
RULES AND ADMINISTRATION

October 3, 2003

Federal Communications Commission
Attn: Paul Jackson
Deputy Director for the
Office of Legislative Affairs
445 12th St. SW
Washington, D.C. 20554
Via Fax: 202-418-2806

Dear Paul:

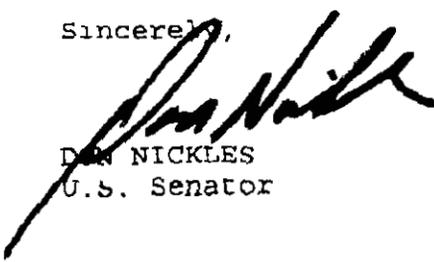
Attached is a letter concerning the recent FCC ruling in which the Telephone Consumer Protection Act of 1991 was amended by eliminating the "established business relationship" provision pertaining to fax advertisements. I am concerned about the negative impacts this may have on legitimate business owners.

I would appreciate your looking into this matter for me. In responding to me, please direct your correspondence to the attention of my representative:

Jennifer Quinlan
133 Hart
U.S. Senate
Washington, D.C. 20510
202-224-6008

Thank you very much for your cooperation.

Sincerely,


DON NICKLES
U.S. Senator

100 NORTH BROADWAY
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OKLAHOMA CITY, OK 73102
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July 30, 2003

The Honorable George W. Bush
The President
The White House
1600 Pennsylvania Avenue., NW
Washington, D.C. 20500

Dear Mr. President:

The State Chamber-Oklahoma's Association of Business and Industry is extremely concerned with the recent actions taken by the Federal Communications Commission (FCC) to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). The FCC has decided, without the proper input from the business and association community, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements. This amendment will place onerous administrative and economic burdens on membership-based organizations by requiring "expressed written consent" from their own members prior to sending a fax solicitation. I hope you share in my concern over this onerous restriction of legitimate commercial activity.

The proposed FCC rule changes, which are scheduled to go into effect on August 25, 2003 - 30 days after they were published in the Federal Register on July 25, 2003, prohibits any person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or services, which is transmitted to any person without that person's prior express invitation or permission." As a result, the established business relationship is no longer sufficient to permit faxes to members pertaining to events such as annual meetings! Associations, chambers and businesses are now faced with the challenging administrative, legal, economic and record-keeping ramifications that will arise thanks to the new FCC changes.

While these changes may be suitable for residential telephone numbers as the new Do Not Call registry provides, they are certainly not acceptable for association/chamber-to-member facsimile communications. Organizations such as ours rely on faxes as a prime source of communication and marketing to meet the needs of their members. With penalties reaching \$11,000 per unauthorized fax, this is a burden that few associations can financially endure. The proposed FCC changes are a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits.

The State Chamber requests your support by either requesting the FCC halt their efforts to change the current TCPA, or adopting federal legislation better describing the intent of the TCPA whereby such FCC rule changes shall not be implemented. Please feel free to contact me if you have any questions or comments about our position on this important member-relations issue.

Sincerely,

Richard P. Rush, CCE
President and CEO

Ronn Cupp
Senior Vice President

330 N.E. 10th Street • Oklahoma City, OK 73104-3220
(405) 235-3669 • FAX (405) 235-3670

www.okstatechamber.com



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