

**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

VERIZON REPLY CONCERNING RECONSIDERATION PETITIONS

Verizon submits this reply concerning two issues raised in the petitions. First, the Commission should grant Verizon's unopposed petition for reconsideration and eliminate the unnecessary notification obligations that its rules impose on LECs. Second, comments filed on state telemarketing regulation make it clear that the Commission must now expressly preempt any state regulation of interstate telemarketing calls that differs from the Commission's rules.

Consumer notification. No one has opposed Verizon's request that the Commission eliminate the requirement that Verizon and other local exchange service providers give consumers repeated and costly notifications of the federal do-not-call (DNC) program. If consumers were not aware of this program in August when Verizon made this request, they surely became aware of it as a result of all the publicity surrounding the subsequent court orders, appeals and congressional activity. The federal registry already contains almost 54 million telephone numbers and the FTC reports that more than 37,000 complaints have been filed with it.¹ While a one-time notification is required by the statute, annual notices costing tens of millions of dollars clearly are not necessary.

State preemption. Verizon did not file a petition concerning state preemption issues because it believed that the Commission's order was clear and correct on this point. In

¹ <http://www.ftc.gov/>, accessed on November 3, 2003.

paragraph 84 of that order, the Commission stated that “any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted.” The Commission went on to explain:

”We will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a declaratory ruling from the Commission. We reiterate the interest in uniformity – as recognized by Congress – and encourage states to avoid subjecting telemarketers to inconsistent rules.”²

Verizon assumed that the states would understand these statements and act accordingly.

The response of the Indiana Attorney General calls that assumption into question and suggests that the Commission does need to expressly preempt inconsistent state rules and needs to do so now. The Indiana Attorney General’s comments read more like a request that the Commission reconsider the rulings made in paragraph 84 than a response to the petitions of other parties. Remarkably, the Indiana Attorney General opposes the relief sought in two PFRs because “it would be inappropriate for the FCC to declare that TCPA preempts — or provides the FCC with the authority to preempt — state DNC laws as applied to interstate calls.”³ This is precisely what the Commission said it was doing.

It is understandable that the Indiana Attorney General would like it if the federal registry was not preemptive, because Indiana’s state system includes “regulation of interstate telemarketing calls that differs from our rules [which] almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted.” Under the federal system, an interstate telemarketing call may lawfully be made to a consumer on the federal DNC

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, ¶ 84 (2003).

³ Indiana Attorney General at 3.

list with whom the seller has an established business relationship. Indiana's rules would make such a call unlawful, because they do not treat such calls any differently from calls from sellers with which the consumer does not have an established relationship.⁴ This rule purports to regulate interstate telemarketing activities and conflicts with the Commission's rules. The Indiana rule would frustrate the federal system, as it would make unlawful calls that the Commission has found should be permitted, and as such, it should be preempted.

In this connection, NASUCA notes that the necessary "harmonization" of the state regimes with the national registry will "take time."⁵ This may be the case. However, the real problem here is the one illustrated by comments of the Indiana Attorney General, which suggests that no "harmonization" at all is necessary and that the states can just continue along with their rules as if the Commission had never adopted a national system.

Conclusion

The Commission should grant Verizon's petition for reconsideration and expressly preempt any state regulation of interstate telemarketing calls that differs from the Commission's rules.

Respectfully submitted,



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⁴ See Indiana Code § 24-4.7 (2003).

⁵ NASUCA at 3.