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October 29, 2004

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation: CG Docket No. 02-278

Dear Ms. Dortch:

On Thursday, October 28, 2004 John A. Greco and Jerry Cerasale of The Direct Marketing Association (“The DMA”) together with Ian D. Volner and Ronald M. Jacobs of Venable LLP separately met with (1) K. Dane Snowden, Jay C. Keithly, and Erica McMahon of the Bureau of Consumer Protection and (2) Sheryl Wilkerson of Chairman Powell’s Office. On Friday, October 29, 2004, the same individuals from The DMA and Venable met with Commissioner Kathleen Q. Abernathy and Matthew A. Brill. The subject of these three meetings was the preemptive effect of Telephone Consumer Protection Act of 1991 (“TCPA”) on interstate telephone solicitations and the pending Petitions for Declaratory Ruling involving the telemarketing laws of New Jersey, North Dakota, and Florida.

The DMA reiterated its position from its Petition for Reconsideration in the above-referenced docket that the Commission should explicitly preempt all inconsistent state laws as they are applied to interstate calls. If the Commission does not use its decision on reconsideration to do this, The DMA urged that it use the three Petitions for Declaratory Ruling to preempt the specific states at issue and to make clear that any state laws that are similar to those being preempted will most certainly be preempted as well.

The DMA explained that its members want to comply – and are complying – with the TPCA (and the FTC’s Telemarketing Sales Rule) but that businesses and consumers are being harmed by the spate of recently-enacted state legislation that imposes additional burdens and outright restrictions on placing interstate calls that are permitted by the TCPA. These inconsistent laws include a more-limited definition of “established business relationship;” duplicative, inconsistent, and costly state lists; and restrictions on calls by tax-exempt nonprofit organizations. The DMA explained that these conflicts imposes costs on consumers and limit a company’s ability to serve its customers.

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In accordance with the Commission's rules, a copy of this letter is being filed electronically for inclusion in the public record of this proceeding.

Respectfully submitted,

/s/
Ian D. Volner

cc: Kathleen Q. Abernathy (*via email*)
Matthew A. Brill (*via email*)
Sheryl Wilkerson (*via email*)
K. Dane Snowden (*via email*)
Jay C. Keithley (*via email*)
Erica McMahan (*via email*)

John A. Greco (*via email*)
Jerry Cerasale (*via email*)