BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	DA 04-3185, 3186, 3187	

COMMENTS OF MILLENNIUM TELESERVICES, INC.
AND
CIVIC DEVELOPMENT GROUP, L.L.C.

I. INTRODUCTION

Millennium Teleservices Corporation (hereinafter "Millennium") operates as an outbound teleservices agency. Its clients consist of some of the largest corporations in America which choose this medium of communication to offer their goods and services to consumers located throughout the United States. Millennium is known for its high quality of service and compliance with telemarketing regulations.

Civic Development Group, L.L.C. (hereinafter "CDG") is one of the providers of services for nonprofit organizations.. CDG does not engage in the sale of goods or services on behalf of nonprofit organizations, but rather provides information, advocacy, and seeks support on behalf organizations granted tax-exempt status under §§ 501(c)(3), (4), (5), (6) and (19) of the Internal Revenue Code.

While Millennium and CDG are domiciled in New Jersey, a prominent part of their business is conducted outside of that state. They reach consumers in every state and are primarily engaged in interstate commerce.

Millennium and CDG join together in the belief that the best and most economical way to deliver services to their clients and the consumers of this country is to act in compliance with a uniform set of regulations that apply to all telemarketing efforts across interstate boundaries in a consistent manner. Costs which must be incurred because of the lack of uniformity are needless and ultimately borne by America's consumers.

While recognizing the value of meaningful regulation with the purpose of protecting consumers, Millennium and CDG respectfully submit that these protections would be more readily understood and accepted if they were uniform in application.

II. COMMENTS

The current circumstance offers the FCC a never before opportunity to reassert the position that there must be uniformity in the administration of standards and regulations governing interstate commerce teleservice activities. Uniform regulation would best serve the industry as well as the American consumer.

Millennium and CDG believe that the frame of regulation set forth in the FTC's Telemarketing Sales Rule (TSR) and the FCC's Telephone Consumer Protection Act of 1991 (TCPA) establishes a comprehensive and near uniform approach to regulation of the telemarketing industry which should be extended on an even basis to cover all activity conducted in interstate commerce. Inconsistency and deviation from these regulations at the state level serve no meaningful purpose other than to create compliance issues that will inevitably raise the cost of goods and services provided.

III. JURISDICTION

The FCC should use its exclusive jurisdiction over interstate commerce telephone calls to enforce uniformity over states' do-not-call laws set forth in DA 04-3186 as well as the definitions pertaining thereto, as set forth in DA 04-3185.

A. State Do-Not-Call Laws.

The laws of the various states pertaining to do-not-call prohibitions contain a plethora of exemptions and exceptions, and in some instances restrictions which make these laws far more onerous than the national do-not-call registry.

The variables found in the states' do-not-call laws are easily demonstrated through the simple review of the law of the state of North Dakota. North Dakota Code § 51-28-01, *et seq.* sets forth the requirements, the exemptions and limitations in the state's do-not-call law.

Although the solicitation by or on behalf of a nonprofit organization, regardless of whether it is conducted by an employee, volunteer, or a compensated agency has been found to be a form of fully protected speech [*See Riley v. National Federation of the Blind of North Carolina,* 487 U.S. 781 (1988)], the North Dakota do-not-call law makes a distinction regarding charitable speech and does not afford the same rights to nonprofit organizations that use professional telefunding agencies.

In addition, the North Dakota statute also provides an exemption for any individual soliciting without the intent to complete, and who does not in fact complete, a sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who made the initial call and the prospective purchaser. Thus, it can also be said that the statute provides a preference for commercial speech over fully protected charitable speech within the meaning of *Metro Media, Inc. v. City of San Diego*, 453 U.S. 490, 513 (1980). Further evidence of the lack of uniformity and the power of lobbying is an exemption carved for newspapers, which provides under N.D. Cent. Code § 51-28-01(7) that an existing business relationship includes a relationship between a seller and consumer based upon a free trial newspaper subscription within the past twenty-four months.

The lack of consistency between North Dakota and similar laws, and the standards set forth in the TCPA and TSR, makes interstate calling more expensive and more difficult to successfully navigate the legal "sink holes."

The North Dakota do-not-call law is the subject of a constitutional challenge by two nonprofit organizations, whereby the trial court declared the law unconstitutional as applied to solicitations on behalf of nonprofit organizations (*See Fraternal Order of Police, North Dakota Lodge, et al v. Stenehjem,* F.Supp. 2d 1023 (D.N.D., Southeast Div., 2003), which is currently on appeal in the United States Court of Appeals for the Eighth Circuit. Nonprofit organizations had to bring this claim and sought no more than to make the application of the telemarketing restrictions consistent with the federal requirements evidences the importance of this issue.

B. Definition of Existing Business Relationships.

Under New Jersey law, the definition of "established business relationship" is at variance with that set forth in the FCC's and FTC's standards pursuant to 47 C.F.R. § 64.1200(f)(3) and 16 C.F.R § 310.2(n) because it creates the same kind of additional expenses and difficulties as a result of the lack of uniformity. The states have varying definitions of this important term. For example, in Alaska the period for the exemption of an "existing business relationship" is twenty-four months, but compare that to the exemption in Louisiana of only six months. *See* Alaska Code § 45.50.475(g)(3)(B)(v) and La. Rev. Stat. § 45:844.12(4)(c). However, under the North Dakota statute a nonprofit organization is not allowed to call a previous donor even if the donation was made within weeks, if the call is being initiated by a compensated commercial telefunding agency.

This is in contradiction to the FCC letter of January 26, 1998, (a copy is attached with this submission) to Delegate Ronald A. Guns from Geraldine A. Matise, Chief, Network Service Division, Common Carrier Bureau of the Federal Communications Commission. In the letter, the FCC's representative stated:

> In light of the provisions described above, Maryland can regulate and restrict intrastate commercial telemarketing calls. The Communications Act, however, precludes Maryland from regulation or restricting interstate commercial telemarketing calls. Therefore, Maryland cannot apply its statutes to calls that are received in Maryland and originate in another state or calls originate in Maryland and received in another state.

The desirability and indeed the necessity of uniformity was further echoed on Friday, July 25, 2003 when the Commission published its Rules and Regulations implementing the Telephone Consumer Protection Act of 1991; Final Rule found in the Federal Register, 68 Fed. Reg. At6 44155, § 62,wherein the Commission stated:

> We therefore believe 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. 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 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.

IV. CONCLUSION

It is hard to envision any benefit that could result from uneven standards of regulation of the interstate communications industry. It seems clear that is the intention of Congress.. See the comments of Senator Hollings concerning the law as set forth in Congressional Record at6 137 Cong. Rec. S. 18781, to-wit:

> Section 227(e)(1) clarifies the bill is not intended to preempt State authority regarding intrastate communications except with respect to the technical standard under § 227(d) and subject to § 227(e)(2). Pursuant to the general preemptive effect of the Communications Act of 1934, State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted.

Even further pronouncement of the intention of the Commission was evidenced in a ruling issued on November 9, 2004, wherein by Memorandum Opinion and Order (FCC 04-267), the Commission declared that a type of Internet telephony service is not subject to traditional state public-utility regulation. The decision of the Commission to preempt state regulation of Internet telephone service is clearly applicable to preempting state "do-not-call" laws and similar restrictions pursuant to the federal scheme of regulation. In the separate statement of Chairman Michael K. Powell, he noted, "We have also worked closely with the states to strike a balance in the area of do-not-call enforcement." Commissioner Kathleen Q. Abernathy was even more emphatic when she stated, in part, in her remarks:

> Allowing the Minnesota utility regulations – or comparable state regulations – to stand would authorize a single state to establish default national rules for all VoIP providers, given the impossibility of isolating any intrastate-only component. Equally troubling is the prospect of subjecting providers of these innovative new services. . . to a patchwork of *inconsistent* state regulations. . . and would deprive consumers of the cost savings and exciting features they can deliver.

Millennium and CDG have internal compliance programs which are designed to ensure compliance with all applicable state laws and federal requirements, and the rights of the consumer are of paramount concern and a matter of constant oversight. Millennium and CDG believe that uniformity is desirable and hopes to ensure the maximum protection of consumers while holding the industry to responsible standards of conduct.

Respectfully submitted,

Errol Copilevitz, Esq.
Attorney for
Millennium Teleservices, Inc. and
Civic Development Group, L.L.C.

Attachment