



CHAIRMAN

Federal Communications Commission

Washington, D.C.
March 2, 2005

02-278

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MAR 11 2005

Federal Communications Commission
Office of the Secretary

The Honorable Herbert Kohl
United States Senate
330 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Kohl:

Thank you for your February 2, 2005 letter regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's Petition for Declaratory Ruling on Preemption of Wisconsin Telemarketing Rules.

The Commission adopted rules establishing a national do-not-call registry and other amendments to its telemarketing rules in a *Report and Order* that it released on July 3, 2003. In establishing the national do-not-call registry, we recognized that states traditionally have had jurisdiction over intrastate calls, while the Commission has had jurisdiction over interstate calls. However, Congress enacted Section 227 and amended Section 2(b) of the Communications Act of 1934 to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. Congress did so based upon the concern that states lack jurisdiction over interstate calls. In the *Report and Order*, the Commission also noted that, although Section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations.

Therefore, the Commission concluded that any state regulation of interstate telemarketing calls that differs from Commission rules almost certainly would conflict with and frustrate the federal scheme, and almost certainly would be preempted. We indicated that the Commission 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 reiterated the interest in uniformity – as recognized by Congress – and encouraged states to avoid subjecting telemarketers to inconsistent rules.

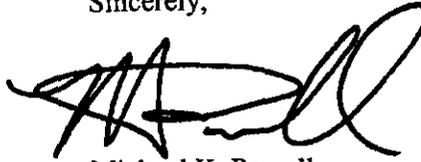
The Commission has received six petitions for declaratory ruling seeking preemption of certain state telemarketing laws. These petitions currently are under review and pending before the Commission. We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding.

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I appreciate your comments and support for the federal do-not-call list. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", with a large, stylized flourish at the end.

Michael K. Powell

FEB. 2, 2005 12:00PM

HERB KOHL
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NO. 782

P. 2

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SPECIAL COMMITTEE
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2 FEB 2005 RCVD

February 2, 2005

Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

I write to urge you and your fellow Commissioners to reject the petition (CG Docket No. 02-278) of the Consumer Bankers Association asking the FCC to preempt Wisconsin's telemarketing laws.

As you know, I was a very strong supporter of the Federal Trade Commission's and the FCC's efforts to create a national do-not-call registry. Indeed, Congress authorized these initiatives with the passage of the Do-Not-Call Implementation Act which became law in March 2003. By all accounts, the law has been immensely successful and popular with consumers, with more than 64 million phone numbers registered on the national do-not-call list. Consumers enrolled in the registry are receiving less telemarketing calls and they have become accustomed to this benefit. Consumers enjoy not being harassed by unwanted sales calls and any backtracking or retreat from the status quo will be wildly unpopular.

Though the federal law has been a success, some states have even stronger do-not-call laws. Wisconsin is one of those states. When the FCC implemented the national do-not-call list, it correctly chose not to preempt state do-not-call lists and rather worked to harmonize the national list with the various state lists. This approach established the national do-not-call list as a floor, not a ceiling, and states could enact stronger laws pursuant to their powers to regulate telemarketing practices.

The Commission chose a wise policy then and would be even wiser now not to disturb state do-not-call laws with preemption as the Consumer Bankers Association would have the FCC do. Preemption of Wisconsin's do-not-call law would have one sure result: annoyed Wisconsinites receiving increased telemarketing calls allowed under a federal exception but prohibited under state law. And I can assure you that most consumers will care little for the legal arguments for or against preemption.

*CCF
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tele
PV
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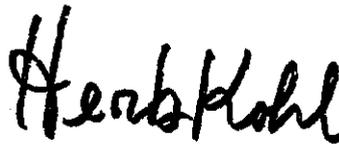
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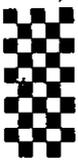
Therefore, I strongly encourage the Commission to allow Wisconsin's do-not-call law to continue to operate free of federal preemption. I look forward to working with you further on this issue.

Sincerely,



Herb Kohl
U.S. Senator

cc. Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein



DATE 2/2/05

TO Chairman Powell

PHONE _____

FAX 202.418.2806

FROM SENATOR KOHL (via Jon Schwantes)



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TOTAL PAGES (including cover) 3

REMARKS ATTN: JIM BEMBER

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- " COLPS
- " MANN
- " ROBERTSON