



Bank of America
Legal Department
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Tel 704.386.9644
Fax 704.264.2483

Sent via Electronic Comment Filing System

January 13, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW.
Washington, DC 20554

Re: CG Docket No. 02-278; DA 05-2975

Dear Ms. Dortch:

Bank of America Corporation (“Bank of America”) welcomes the opportunity to comment on the petition for declaratory ruling (“Petition”) filed by the Fax Ban Coalition (the “Coalition”) published by the Federal Communications Commission (“Commission”), regarding the scope of the Commission’s jurisdiction over interstate faxes under the Telephone Consumer Protection Act (“TCPA”). Bank of America is one of the world’s largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving 38 million consumer and small business relationships with 5,800 retail banking offices, more than 16,700 ATMs and award-winning online banking with more than 14 million active users.

Bank of America supports the position taken by the Coalition in the Petition that the TCPA grants the Commission exclusive jurisdiction over *interstate* communications, including faxes, thereby leaving no jurisdiction over such activity with the states. However, a number of states have passed laws that purport to cover all faxing activity to their residents, whether intrastate or interstate, many of which are inconsistent with the Junk Fax Prevention Act

of 2005 (the “JFPA”) and regulations being proposed by the Commission to implement that law. Specifically, some of the states’ laws do not permit faxing of advertising material to persons with whom the entity sending the faxes has an established business relationship, which is specifically permitted in the JFPA. Bank of America conducts interstate telemarketing and incidental faxing activities, and currently is faced with many competing state laws regarding these activities that significantly hamper its activities. In addition, these varying state laws create significant confusion among consumers, many of whom deal with companies that conduct business nationally or at least on a multi-state basis and who frequently move from state to state.

We have previously expressed support for the national Do Not Call Registry and a consistent uniform national standard to apply to telemarketing activity. Bank of America believes that the jurisdictional approach taken in the Petition is both legally correct and also presents the only practical and equitable solution to the difficult and burdensome problem of a growing number of multiple incompatible state laws that attempt to regulate interstate communications, including faxing. We expressed this position in another petition before the Commission dealing with interstate telemarketing and believe the same principle applies to faxes. Therefore, we strongly urge the Commission to issue a ruling declaring the Commission’s exclusive regulatory jurisdiction over interstate faxing and barring the state regulation of such calls.

Bank of America appreciates the opportunity to comment on the Petition. If you have any questions regarding our comments, please contact Kathryn D. Kohler, Assistant General Counsel, at (704) 386-9644.

Very truly yours,

Kathryn D. Kohler

Kathryn D. Kohler
Assistant General Counsel