United States Senate

WASHINGTON, DC 20510-0905

July 29, 2005

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: FCC Docket Nos. CG 02-278, DA 05-1346, DA 05-1347

Dear Chairman Martin:

In light of our longstanding interest in consumer protection and privacy, the undersigned members of Congress jointly submit these comments in the above referenced dockets. These agency proceedings deal with the important issue of preempting state telemarketing laws. For the reasons discussed below, we are strongly opposed to the preemption of such laws.

These agency proceedings are important because the petitioners explicitly have asked the Commission to erode consumer privacy in states with telemarketing laws that exceed federal protections. Specifically, several of these petitions seek to loosen telemarketing protections in different states by requiring these states to recognize the "established business relationship" loophole to the successful federal Do-Not-Call Registry. As you know, the established business relationship exception allows telemarketers to contact people on the Do-Not-Call Registry if they have made a purchase from the calling company in the past eighteen months or have made an inquiry in the past three months. Some states have rejected this loophole because it does not comport with individuals' reasonable expectations that if they registered for the Do-Not-Call Registry, they should not be called unless they give specific consent to a telemarketer. States should not be precluded from affording their citizens this level of privacy if they wish.

Three petitions seek to require Florida and North Dakota to recognize an exception for pre-recorded telemarketing messages. These states do not currently allow telemarketers to call state citizens and play pre-recorded messages.

The last petition urges the Commission to invalidate all state telemarketing laws that are more stringent than federal law. Many of these state laws are region-specific, such as a telemarketing regulation in Louisiana that allows the state to limit telemarketing during natural disasters. These state laws recognize regional needs that often do not rise to the attention of federal regulators. Other state regulations include "no rebuttal" laws that prevent telemarketers from continuing a solicitation once the consumer objects to the call. These reasonable state laws have been enacted to address specific problems that have not yet been incorporated in federal consumer protection laws.

While Congress frequently promulgates laws intended to enhance consumer privacy, state laws often remain critical for effective consumer protection. Many innovative ideas for protecting privacy and consumers have originated in state legislatures. The Do-Not-Call Registry is just one example of many consumer privacy protections implemented by state legislatures that are later adopted at the federal level by Congress or an administrative agency. Consumers will continue to be served best by a dual regulation system that allows state responses to telemarketing practices.

Telemarketers have complied with both state and federal telemarketing regulations since the Telephone Consumer Protection Act was first enacted in 1991. At its passage, many states had enacted anti-telemarketing laws, but Congress chose not to preempt these laws. Congress protected both state regulation of intrastate telemarketing as well as state prohibitions on interstate telemarketing.

Again, we urge the Commission to reject these petitions and to allow state laws to operate as they currently stand. Each one of these state laws was enacted by a legislature to address specific problems created by telemarketing.

If you have any questions related to our comments, please contact our offices.

Sincerely,

Sen. Bill Nelson

Sen. Byron L. Dorgan

Sen. Russell D. Feingold

Sen. Evan Bayh

Sen. Richard G. Lugar

Sen. Herb Kohl

Sen. Jon S. Corzine

Sen. Frank R. Lautenberg

Sen. Kent Conrad

Sen. Mel Martinez