



CHAIRMAN

Federal Communications Commission

Washington, D.C.

October 1, 2003

Robert Wientzen, President and CEO
Jerry Cerasale, Senior Vice President
The Direct Marketing Association, Inc.
1111 19th Street, N.W., #1100
Washington, DC 20036

Dear Mr. Wientzen and Mr. Cerasale:

I was very pleased by Mr. Cerasale's remarks at today's hearing before the U.S. Senate Committee on Commerce, Science and Transportation, stating the DMA's "commitment to the American people not to call those who have expressed their desire not to be called." I applaud your offer to work with the Federal Communications Commission and the Federal Trade Commission to "establish a means for all telemarketers to obtain the [Do-Not-Call] registry, so that no telemarketers will be locked out of honoring consumer requests" not to be called. Further, I recognize that this offer is consistent with the DMA's longstanding stated policy of seeking to honor the wishes of consumers who do not wish to receive telemarketing calls. Since 1985, the DMA has compiled its own Do-Not-Call list, the Telephone Preference Service, which its members are required to use.

As you know, recent court decisions have introduced confusion and uncertainty to the legal landscape. While the FCC has legal authority to enforce our Do-Not-Call rules, certain practical difficulties exist because of court decisions involving the FTC's rules. The FCC's Do-Not-Call rules incorporate a single federal do-not-call database, created and implemented by the FTC. As you are aware, recent court decisions may prevent the FCC from obtaining the database and related information necessary for enforcement directly from the FTC.

I believe that by working together now, we can find a way during this time of legal uncertainty to achieve our common goal of ensuring respect for the wishes of American consumers. I hope you will agree that in providing such an assurance to consumers, we could also provide greater certainty for the telemarketing industry, including your association's members, as the industry seeks to operate lawfully under the FCC's rules. One way to achieve these certainties for both consumers and your industry is to create a clear framework within which telemarketers must operate and within which the FCC will carry out its responsibility to enforce the law.

Consistent with these goals, I request that the Direct Marketing Association voluntarily provide the FCC with materials that will promote telemarketers' compliance with the national Do-Not-Call registry, promote consumer choice and enhance the FCC's ability to enforce its rules concerning the national registry. More specifically, I request that the DMA provide, first, a copy of the national Do-Not-Call registry database and, second, a listing of each DMA member that, to DMA's knowledge, has downloaded the national Do-Not-Call database, including, if known, the date of each download. This information will promote the FCC's ability to protect residential telephone subscribers throughout the United States from unwanted telemarketing initiated by all entities that have already downloaded the list, which I believe is our common goal. Providing the Do-Not-Call registry database to the FCC is permitted under FCC rules, which generally require that copies of the registry not be used for any purpose other than compliance with Do-Not-Call requirements and that parties do not defeat registry fee mechanisms by splitting costs. I believe that FTC rules are consistent with FCC rules in this area. See 47 C.F.R. §64.1200(c)(2)(E); 16 C.F.R. § 310.4(b)(2), 310.8(c).

This approach is one that will work positively both for consumers and for law-abiding members of the telemarketing industry. I hope that we can join together in achieving our common goal of ensuring respect for consumer preferences.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", enclosed within a large, loopy oval flourish.

Michael K. Powell