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“DO-NOT-CALL LIST” TESTIMONY
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION*

TESTIMONY BY: MICHAEL K. POWELL**

SEPTEMBER 30, 2003

Good morning, Mr. Chairman and distinguished members of the Committee. It is my pleasure to come before you today with my colleague Federal Trade Commission Chairman Tim Muris to discuss the implementation of the national Do-Not-Call Registry.

First and foremost, let me assure every American consumer and the Congress that the FCC will continue to devote its full resources and exhaust every legal remedy to ensure that the national Do-Not- Call list survives.

More than ten years ago, Congress vested the Federal Communications Commission with broad authority to protect consumers from unwanted calls. In our June order, we expanded on that effort. Last week, when these rules were challenged in the Tenth Circuit Court of Appeals, the Court specifically refused to block our rules. It held that “on the record presented . . . [the telemarketing industry] ha[d] failed to establish a likelihood of success on the merits.” Citing the strong public interest in leaving these rules in place, the Court made clear that the rules should go forward. Most recently, the Supreme Court yesterday declined to disturb the Court’s ruling.

However, as a practical matter, challenges to the FTC’s rules affect the enforcement of our rules because the statute instructed the two agencies to work in partnership with one another to achieve our common consumer protection goals. Over the past week, three district court decisions (the most recent issued last night) addressing the FTC’s rules have introduced confusion with regard to the implementation and enforcement of the national Do-Not-Call Registry. The Colorado district court’s order last night has raised questions about the FCC’s ability to enforce the list. Most directly, to the extent the court’s ruling prevents the FCC from accessing the FTC’s database, our enforcement efforts may be hampered.

We are still studying the court’s latest order and working hard to clarify the legal landscape. In the meantime, I commit to you that, to the extent legally permissible, the Federal Communications Commission will enforce its National Do-Not-Call rules against telemarketers that have obtained the Do-Not-Call Registry from the Federal Trade Commission.

If consumers on the list receive a prohibited call, they may file a complaint by calling 1-888-CALL-FCC or by visiting our website at <http://www.fcc.gov> . The Commission will evaluate all complaint data so that, to the extent legally permissible, it can target enforcement to most aggressively protect consumers.

I also want to emphasize that while the Do-not-Call List has captured the most attention, the FCC’s comprehensive telemarketing rules protect consumers in many ways that are completely

unaffected by court challenges. For example, consumers have the right (1) to be placed on a company-specific do-not-call list; (2) to be protected from all calls between 9 p.m. and 8 a.m.; and (3) to be free from excessive hang ups or dead air calls. These rules clearly are in effect and enforceable. Notwithstanding how the court challenges resolve themselves, telemarketers have important and ongoing responsibilities to protect consumers.

Finally, to defend the consumer's choice about telemarketing calls, the government has marshaled all its resources. The Federal Communications Commission, the Federal Trade Commission and the Department of Justice are working together to vigorously defend the Do-Not-Call rules in a number of courts around the country. In the face of an adverse court ruling, this Congress showed decisive leadership and commitment by acting with dispatch over the past week to cure any possible jurisdictional questions. And the President without haste signed the legislation and has lent his full support to our efforts to protect consumers. I stand ready to work with Congress to find a path to effectuating the will of the American people. With this team, I remain confident that we will prevail.

I believe our rules will withstand Constitutional challenge. In the end, I am simply unwilling to accept the notion that the First Amendment unavoidably bars the American people from deciding who calls them in the privacy of their own homes. I assure you that the full resources of the FCC are committed to defending our rules and taking any steps necessary to effectively implement and enforce them, to the full extent permissible by law.

Thank you Mr. Chairman and distinguished members of the Committee. I will be happy to take your questions.

* The *Richmond Journal of Law & Technology* has not verified the accuracy of these remarks.

** Mr. Powell is the Chairman of the Federal Communications Commission.