

United States Senate

WASHINGTON, DC 20510

March 14, 2005

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Dear Chairman Powell:

We are writing you to express our opposition to the petition filed by the Consumer Bankers Association (CBA) with the Federal Communications Commission (FCC) on November 19, 2004. This petition asks the Commission to issue a declaratory ruling preempting sections of Indiana's Telephone Privacy law. If successful, it would remove protections enjoyed by over three million Indiana residents under the State's enormously successful "Do-Not-Call" law.

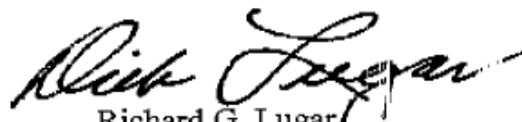
The CBA's petition specifically requests that the FCC preempt Indiana's laws to the extent that they prohibit telemarketing calls to persons and entities with which the caller has an established business relationship as defined in rules promulgated by the FCC under federal law. In response to this petition the Commission initiated proceedings on December 7, 2004 (CG Docket No. 02-278). The FCC solicited comments on this case through February 2 and responses were due February 17, 2005.

As Senators for the State of Indiana, we urge the Commission to proceed with the utmost care and caution as it reviews this case. Indiana's Do-Not-Call program is the most utilized consumer protection law in the history of the state, and our constituents are contacting us on a daily basis to express their dismay that their rights under this law might be abrogated. Further, preemption of Indiana's law is likely to have a similar impact on the residents of a number of other states who currently benefit from similar state-initiated protections.

We acknowledge the federal government's supremacy in matters of interstate commerce as enshrined in the Constitution. But the Supreme Court has generally approached the issue of federal preemption of state law "with the assumption that the historic police powers of the States were not to be superseded by [a federal law] unless that was the clear and manifest purpose of Congress" [*Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 697, 605 (1991)]. With that assumption in mind, we would like to encourage the Commission to give Indiana's statute – which predates Congressional action in this area – every consideration.

Along those lines, we urge the Commission to move at a deliberate and measured pace as it considers the interests not only of the people of Indiana, but of all Americans who are currently afforded greater protections than those provided at the federal level.

Sincerely,


Richard G. Lugar
United States Senator


Evan Bayh
United States Senator