

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY**



**Testimony of Attorney General Gregory F. Zoeller
State of Indiana
November 4, 2011
H.R. 3035, The Mobile Informational Call Act of 2011**

Good Morning Chairman Walden, Ranking Member Eshoo and members of the committee. Thank you for giving me the opportunity to speak today. I am here to express my concerns about the Mobile Informational Call Act of 2011 (H.R. 3035) which seeks to amend the Telephone Consumer Protection Act (TCPA). Since my office enforces the TCPA and also enforces state laws concerning telephone solicitations, automated calls, junk faxes and text messages, I want to offer my perspective on the effect of the proposed changes. I also want to suggest a simple alternate change to the TCPA to make clear that state telephone privacy protections are not preempted. My concerns are shared by at least eight of my Attorney General colleagues.

In short, H.R. 3035 will create obstacles to effective enforcement of state consumer protection laws and go far beyond the stated goal of giving debt collectors a new avenue to contact debtors. The State proposes that Congress instead eliminate any suggestion from the TCPA that state statutes regulating interstate telephone and fax harassment are preempted.

For more than 20 years, Indiana has protected its citizens from unwanted telephone calls in several ways: First there was the Autodialer Act passed in 1988. It prohibits most auto-dialed prerecorded message calls, with few exceptions. The Do Not Call law was next in 2001—which is one of the most restrictive Do Not Call laws in the country. We also have a very successful Do Not Fax law, enacted in 2006, which in four years has reduced fax complaints by 93%.

Since the Do Not Call law was passed, more than 2 million Hoosiers have opted for protection from unwanted telemarketing calls from businesses and charities. In 2011, our General Assembly amended the Do Not Call law to add cell phones. This was so popular that I had to extend our registration deadline to allow some 189,000 citizens to add their numbers to the list.

The success of Indiana's no-call law had the unexpected side-effect of making Hoosiers more sensitive to autodialer calls, especially political calls. Our office has filed lawsuits against political robo-callers, which led to Indiana's three main political parties coming together to sign the "Treaty of 2010," where they pledged not to use autodialers to bother Hoosier voters.

The changes proposed in H.R. 3035 will create obstacles to effective enforcement of state consumer protection laws. These changes go far beyond the stated goal of giving debt collectors a new avenue to contact debtors. H.R. 3035 proposes to remove the non-preemption clause in the TCPA and replace it with a wholesale preemption of all state telemarketing, autodialer and fax laws. To understand what a radical change H.R. 3035 proposes, you have to first understand the history of both the Federal Communications Act of 1934 and the Telephone Consumer Protection Act of 1991. The FCA is primarily concerned with regulation of telephone *services* and *facilities*. Understandably, you need regulation for a nation-wide and world-wide system of communication *transmission* to work properly. However, prohibiting telephone abuses, such as harassing, obscene or fraudulent calls, even if they cross state lines, has always been the terrain of the States, which even the FCC has recognized.

Previous efforts to preempt states under the TCPA have been largely unsuccessful. At the direction of Congress, the FCC created the national Do Not Call program in 2003. At that time, the FCC speculated that state laws that imposed greater restrictions on interstate calls might be preempted, and it invited petitions seeking preemption of state laws. After receiving several petitions and thousands of comments, the FCC never ruled on this issue. After nearly seven years, it is reasonable to infer that the FCC has concluded that the TCPA does *not* preempt State laws prohibiting interstate telephone harassment.

Rather than gutting state regulation concerning harassing calls and faxes, Congress should be strengthening it. While preemption of such state laws has not been a problem up to

this point, Indiana's recent litigation experience demonstrates that States and their residents cannot take their residential privacy protections for granted any longer. Last year, a group called Patriotic Veterans filed suit to enjoin enforcement of the Autodialer law. A federal court recently ruled that the TCPA preempts our Autodialer law. I believe that ruling is wrong and I'm appealing it to the 7th Circuit.

The best way for Congress to eliminate uncertainty concerning preemption of state telephone and fax harassment laws is to remove the word "intrastate" from 47 U.S.C. § 227(f)(1). This modification would eliminate any distinction between interstate and intrastate laws, and thereby clarify that *no* state laws are preempted by the TCPA, even as applied to interstate calls. This slight modification should convince telemarketers and courts alike that States have every right to stop the invasion of residential privacy, and the imposition of costs on consumers by means of telephones and fax machines.

Consumer protection, including protection against deceptive trade practices and privacy invasions that occur by telephone, has long been within the states' traditional police powers. As the chief law enforcement officers of our states, we regard the protection of our consumers from unfair and deceptive trade practices as one of our top law enforcement priorities. States have always been on the front line, enacting and enforcing laws to address new forms of deception and intrusion affecting consumers. Indeed, states have traditionally served as laboratories for the development of effective laws and regulations to protect consumers and promote fair competition. Congress should use this opportunity to strengthen state authority in this important area rather than boost the prospects of those who would use the telephone to bother consumers.

Thank you for the opportunity to testify today.

A detailed analysis follows:

1. Background regarding Indiana’s regulation of harassing calls and faxes

Indiana protects its citizens from unwanted telemarketing calls in three ways. First, in 1988, the General Assembly enacted the first of these by banning, absent the consent of the call recipient, calls that deliver prerecorded messages by way of autodialers. *See* Ind. Code § 24-5-14-5 (“Autodialer Law”). The Autodialer Law sweeps within its ambit *all* autodialed, prerecorded calls (with narrow exemptions), including survey calls, political-campaign calls, and collection calls to persons with whom the debt collector has no business relationship: “A caller may not use or connect to a telephone line an automatic dialing-announcing device . . .” that delivers a prerecorded message. *See* Ind. Code § 24-5-14-5(b).

Second, in 2001, the General Assembly enacted a second level of protection—upheld in *National Coalition of Prayer, Inc. v. Carter*, 455 F.3d 783, 790 (7th Cir. 2006)—permitting citizens to register with the Attorney General their preferences not to receive “telephone sales calls.” “Telephone sales calls” means only calls peddling “consumer goods and services” or soliciting “a charitable contribution.” Ind. Code §§ 24-4.7-2-9, 24-4.7-4-1. Telemarketers may not, without consent, make telephone sales calls—no matter how dialed—to registered residential telephone numbers. *See* Ind. Code § 24-4.7-2-9 (the “Telephone Privacy Act” or “do-not-call” law). In 2011, the Telephone Privacy Act was amended to add wireless and VOIP telephone numbers to the protection of the Indiana Do-Not-Call list, and to expand the definition of a telephone sales call to include text messages. *See* P.L.226-2011, Sec. 11-12.

Finally, in 2006, the Indiana General Assembly enacted the Do Not Fax Act making the sending of an unsolicited fax advertisement a deceptive act under Indiana law. Ind. Code § 24-5-0.5-3(a)(19).

2. Background regarding federal regulation of harassing calls and faxes

To understand what a radical change H.R. 3035 proposes, one must understand the history of both the Federal Communications Act of 1934 and the Telephone Consumer Protection Act of 1991.

Regulation of telephone harassment and fraud, as distinct from regulation of telephone *services* and *facilities* constitutes an area of traditional state concern. For while Congress and the FCC have long asserted primacy over the physical and pricing components of interstate transmission of telephonic messages, it has not historically regulated the content of such messages. Indeed, the underlying regulatory rationale of the Federal Communications Act of 1934 is to ensure a “rapid, efficient Nation-wide, and world-wide, wire, and radio communication *service* with adequate *facilities* at reasonable charges” 47 U.S.C. § 151 (emphasis added). The FCA applies to “all interstate . . . communication by wire,” 47 U.S.C. § 152(a), where the term “communication by wire” is expressly defined to mean only “the *transmission* of writing, signs, signals, pictures, and sounds of all kinds by aid of wire . . . between the points of origin and reception of such transmission, including all *instrumentalities, facilities, apparatus, and services* (among other things the receipt, forwarding and delivery of communications) incidental to such transmission.” 47 U.S.C. § 153(59) (emphasis added). Thus, the power to regulate interstate communication by wire is only the power to regulate interstate transmission, not the content of the communication, the conduct of the communicator, or the protection against injuries caused by harassing or fraudulent communications. *See La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 360 (1986) (discussing the dual system of state and federal regulation of telephone *service*); *see also City of New York v. FCC*, 486 U.S. 57, 65 (1988) (holding that the FCC has preempted state laws regarding *technical standards* for cable

television signals).

Accordingly, prohibiting telephone abuses, such as obscene or fraudulent calls, even if they cross state lines, has long been the terrain of the states. *See* Ind. Code § 35-45-2-2 (prohibiting harassment by obscene messages); Ind. Code § 24-5-0.5-1 *et seq.* (Indiana Deceptive Consumer Sales Act). *See also People ex rel. Spitzer v. Telehublink Corp.*, 756 N.Y.S.2d 285 (N.Y. App. Div. 2003) (undertaking state consumer protection enforcement action where violation occurred via interstate telephone calls); *Commonwealth v. Events Int'l, Inc.*, 585 A.2d 1146, 1148, 1151 (Pa. Commw. Ct. 1991) (same).

Even the FCC has expressly acknowledged that “states have a long history of regulating telemarketing practices.” *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C.R. 14014, at 14060 ¶ 75 (Jul. 3, 2003) (hereinafter, “2003 FCC Report”). And it has stated that “the Communications Act does not govern” issues related to consumer protection. *In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 F.C.C.R. 15014, at 15057 ¶ 77 (Aug. 20, 1997) (emphasis added).

Laws restricting telemarketing, robocalling, and faxing regulate caller conduct and are related to consumer protection, not communication service. They do not interfere with Congress’ goal of providing a rapid, efficient, reasonably priced national telecommunications service, even when applied to interstate calls. They do not regulate the provision of telephone services, the physical facilities of telephone services, or the price of telephone services. They merely protect residential privacy and the imposition of unwanted costs on consumers, which are traditional concern of the states. Indeed, Indiana is not alone in its concerns about telemarketing calls in general and autodialed phone calls in particular. By 1991, more than 40 separate states had enacted legislation restricting autodialing devices and unsolicited telemarketing. *See* S. Rep. No. 102-178 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970.

Recognizing the concerns motivating these laws, Congress enacted the TCPA in 1991 to supplement state laws. *See* S. Rep. No. 102-177, at 1-3. In doing so, Congress noted that less than 0.01% of the population “likes” receiving telemarketing calls. The TCPA enacted a few restrictions against using autodialers (such as to call hospital emergency rooms) and sending unsolicited faxes and authorized the FCC to consider regulations to protect individual telephone privacy. *See* 47 U.S.C. § 227(b)(1)(A)(i), (b)(1)(C), (b)(2) (1991). The FCC responded with a rule requiring telemarketers to maintain company-specific no-call lists, which proved a monumental failure in the protection of residential privacy. *See, e.g., F.T.C. v. Mainstream Mktg. Services, Inc.*, 345 F.3d 850, 858-59 (10th Cir. 2003).

Because the TCPA was designed to supplement state law rather than supplant it, nothing in the text of the TCPA purports to preempt state laws governing harassing interstate telephone calls. To be sure, TCPA legislative findings and history suggest that some Senators erroneously *assumed* that states were already precluded by the FCA from regulating interstate telemarketing calls. *See* S. Rep. No. 102-177, at 3 (1991); *see also id.* at 9 (“Federal action is necessary because States do not have the jurisdiction to protect their citizens against those who [place] interstate telephone calls.”); 137 Cong. Rec. S16204, 16205 (1991) (statement of Sen. Hollings) (“State law does not, and cannot, regulate interstate calls.”); 105 Stat. at 2394 (“Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operation.”). Yet even these statements are ambiguous and likely refer to enforcement difficulties rather than preemption difficulties. Even if they mistakenly assume prior preemption, that mischaracterization does not *itself* create preemption—or a preference for nationally uniform regulation—not already extant.

In fact, to the extent Congress erroneously assumed that some preemption of state law might already exist, the TCPA expressly disclaimed it:

(f) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits--

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

47 U.S.C. § 227(f)(1).

3. Efforts to preempt states under the TCPA have been unsuccessful until recently

Under the TCPA, in 2003 the FCC issued a rule creating a federal do-not-call program. *See generally* In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd. 14014 (2003) (hereinafter, “Report and Order”).

In that Report and Order, the FCC declined to preempt state laws itself and acknowledged that the non-preemption clause quoted above may protect any state laws prohibiting interstate calls. *See* 2003 FCC Report, at ¶ 60. Yet it speculated that “any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted,” and invited petitions seeking preemption of state laws. Report and Order ¶ 84. Its inaction since then, however, demonstrates that the FCC has likely been persuaded otherwise.

In 2004 and 2005, several telemarketing interests asked the FCC to declare Indiana's Do-Not-Call Law preempted under the TCPA. *See* Petition for Declaratory Ruling, *In re Consumer Bankers Association*, FCC CG Docket No. 02-278 (filed November 19, 2004) (seeking declaratory ruling declaring Indiana telemarketing laws preempted by FCC rules); Joint Petition for Declaratory Ruling, *In re Alliance Contact Services*, FCC CG Docket No. 02-278 (filed April 29, 2005) (seeking declaratory ruling stating that FCC has exclusive regulatory jurisdiction over interstate telemarketing). The FCC received thousands of comments on these petitions, not only from commercial speakers but also from groups whose messages would constitute core speech protected by the First Amendment. *See generally* FCC CG Docket No. 02-278. In the face of briefing by Indiana (and other States) and various consumer protection advocates, the FCC has ignored its own rulemaking rhetoric and apparently found TCPA preemption arguments so unconvincing that it has *never even bothered to rule* on these petitions. After nearly seven years, it is reasonable to infer that the FCC has concluded that the TCPA does not preempt State laws prohibiting interstate telephone harassment, yet has decided to allow the petitions to die quietly rather than to announce that its initial assumptions were incorrect.

What is more, Congress and other federal agencies have already ensured that there is *not* a uniform national telemarketing policy. *See* 15 U.S.C. § 6102 (authorizing the FTC to create a different set of rules for telemarketing on behalf of charities); 16 C.F.R. § 310.7(b) (expressly *not* preempting state telemarketing laws with respect to charities); *see also* 47 U.S.C. § 227(f)(1) (expressly acknowledging that states will continue to “regulat[e] . . . telephone solicitations,” after a federal do-not-call system is established); 47 U.S.C. § 227(c)(3)(J) (requiring that any FCC database “*shall . . . be designed to enable States to use the [Commission’s database] . . . for purposes of administering or enforcing State law*”) (emphasis added).

Against this backdrop it is no surprise that almost every court to have considered the

matter has rejected the argument that the TCPA preempts state telephone harassment laws as applied to interstate calls. *See Int’l Sci. & Tech. Inst., Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146, 1153 (4th Cir. 1997) (“Congress stated that state law is not preempted by the TCPA.”); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1548 (8th Cir. 1995) (“[T]he [TCPA] includes a preemption provision expressly *not* preempting certain state laws.”) (emphasis added); *State ex rel. Stenehjem v. FreeEats.com, Inc.*, 712 N.W.2d 828, 834-35 (N.D. 2006) (“[R]ead logically and grammatically, the [savings clause] states that nothing in the TCPA preempts . . . any state law ‘which prohibits’ calls within the enumerated list.”), *cert. denied*, 549 U.S. 953 (2006); *Utah Div. of Consumer Prot. v. Flagship Capital*, 125 P.3d 894, 898 (Utah 2005) (holding that the TCPA did not preempt Utah’s autodialer law).

Nonetheless, Indiana is currently embroiled in litigation where a federal district judge has declared Indiana’s autodialer law, Indiana Code section 24-5-14-5, preempted by the TCPA. *See Patriotic Veterans, Inc. v. State ex rel. Zoeller*, No. 1:10-cv-723-WTL-TAB, 2011 WL 4479071 (S.D. Ind. Sept. 27, 2011). In *Patriotic Veterans*, Judge Lawrence cited no text from either the FCA or the TCPA that preempts state law, but instead ruled that the TCPA non-preemption clause quoted above (47 U.S.C. § 227(f)(1)), *implicitly* preempted Indiana’s autodialer law as applied to interstate calls conveying political messages. *Id.* at *2, *4. This ruling is plainly in tension not only with other TCPA precedents cited above, but also with Supreme Court authority that requires lower courts to presume that there is *no* federal statutory preemption, and that this presumption can be overcome only by an *affirmative* statement of preemption, *not* by negative implication. *See, e.g., Altria Group v. Good*, 555 U.S. 70, 77 (2008). Accordingly, Indiana is appealing this one-of-a-kind ruling, and has asked the district court for a stay of its injunction pending appeal.

4. Indiana's success in regulating harassing telephone calls and faxes

It is important to observe that the *Patriotic Veterans* lawsuit has come about precisely because Indiana has such an effective matrix of laws that prohibit telephone harassment. Indiana is known for its strict protection of residential privacy from telemarketers. Since 2002, the Attorney General has fielded 27,577 valid complaints under the Telephone Privacy Act and Autodialer Law. Of these, 4,668 have been settled via an Assurance of Voluntary Compliance, 21,488 have been resolved by other means, and investigations are ongoing in 1,401. When it comes to restricting telephone sales calls, Indiana's Telephone Privacy Act "is one of the best in the country because it has so few exemptions." Maureen Groppe, *National no-call list may be lax*, The Indianapolis Star, Feb. 28, 2003 (citing views of Bob Bulmash of Private Citizen).

Scientific survey evidence confirms the efficacy of the Telephone Privacy Act. Shortly after the Telephone Privacy Act became enforceable in 2002, Dr. Tom W. Smith, the Director of the General Social Survey Program at the National Opinion Research Center and a leading international expert on the design and conduct of surveys, collaborated with Walker Information to design and conduct a survey to determine the impact of the Telephone Privacy Act on the level of telemarketing calls in Indiana. The survey showed that for people on the do-not-call list, calls on average declined from 12.1 per week (demonstrating the existence of the original telemarketing problem) to 1.9 per week post-enforcement, a decline of over 80%. By way of comparison, non-registered households continued to receive 7.7 calls per week post-enforcement. This led Dr. Smith to conclude that the Telephone Privacy Act "led to a huge decline in telemarketing calls, remains highly successful, and is extremely effective."

The popularity of the do-not-call law has only increased over time. In July 2008, the do-not-call list contained 1,957,697 numbers, approximately 75.5% of Indiana households. On

October 1, 2011, Indiana's no-call registry contained 2,068,589 unique telephone numbers. Indeed, the recent amendment to state law permitting registration of cell and VOIP numbers proved so popular that the Attorney General decided to extend the third quarter registration deadline for the Do-Not-Call list from May 17 to May 23, 2011. The end result was 189,253 new numbers registered on the third quarter list that took effect on July 1, 2011. Plainly, Hoosiers take very seriously their right to refuse calls from telemarketers.

The success of the Indiana no-call-law has had an unexpected side-effect related to autodialers. With the airwaves cleared of telephone sales calls, the unlawful use of autodialers by political interest groups (whose purely political messages are not "telephone sales calls" governed by the no-call law) became impossible to ignore. In 2006, after receiving complaints from citizens about the use of autodialers by political groups to send pre-recorded messages, the Attorney General warned Indiana's political parties that they could expect enforcement actions if they violated the Autodialer Law. When the Attorney General received yet more complaints in the months prior to the November 2006 election, he filed lawsuits against several responsible entities and individuals.

These lawsuits generated further negative publicity for political groups who use autodialers to call Indiana residents and hardened the will of Hoosiers not to tolerate such calls. Of the 8,799 valid complaints received since January 1, 2009, 4,553, or 51.7%, have reported the use of autodialers. In the last two years alone, of 10,376 valid complaints filed with the Office of Attorney General about unwanted telemarketing, 72% have come from autodialed calls, emphasizing Hoosier unwillingness to accept such intrusions. In view of the profound unpopularity of autodialed, pre-recorded calls, including those conveying political messages, Indiana's three main political parties came together on January 5, 2010, and signed what has become known as the "Treaty of 2010," whereby each pledged not to use autodialers. Plainly,

politicians and political interest groups take a tremendous risk of incurring public wrath when they use autodialers and pre-recorded messages to contact Indiana residents. One consequence may be that the only groups willing to use this technology will be those dedicated to disguising the source of the call.

5. Rather than replace the TCPA's non-preemption clause, Congress should make only a slight change to clarify that federal law does not preempt state law regulating harassing telephone calls and faxes

As currently drafted, HR 3035 would eliminate the savings clause in 47 U.S.C. § 227(f) and replace it with the following text: "No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under this section, except for telephone solicitations." This text would cause many problems for state enforcement of telephone privacy laws and expose Indiana residents to untold residential privacy interruptions.

To begin, this text is vague. What, exactly, is the "subject matter regulated under this section"? Does it include, for example, calls conveying political messages, which the TCPA expressly disclaims as a subject of regulation? And how far does the purported exception "for telephone solicitations" extend? Does it include fax or text message solicitations? Does it permit states to regulate solicitation calls by charities, when state law defines such calls to be "telephone solicitations"? And does this exception preclude arguments that state laws regulating telephone solicitations are preempted by other components of the Federal Communications Act? Does it prevent states from imposing fines or bringing actions in state courts? Particularly in light of the State's extensive experience defending Indiana's telephone harassment laws from preemption attacks, there is no doubt that such loose language could be twisted even by unskilled lawyers in ways Congress does not intend.

Second, on its face this proposed text would preempt many applications of state laws concerning junk faxes, unwanted text messages and automated calls, and possibly application of no-call registry laws to charities. In this regard, H.R. 3035 not only demeans the principles of federalism that have worked for so long; it also ignores decades of success with dual regulation in many areas of consumer protection. And to the extent it precludes some applications of state no-call registry laws, it would even override the express requests of individuals not to be bothered in their homes. People have the right to protection of residential privacy. *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (“The State’s interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.”) (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)). Callers, on the other hand, do not have the right to call those who do not want to be called, no matter the subject of the call. *See, e.g., Nat’l Coal. of Prayer, Inc. v. Carter*, 455 F.3d 783, 790 (7th Cir. 2006); *Bland v. Fessler*, 88 F.3d 729, 735 (9th Cir. 1996); *Van Bergen v. Minn.*, 59 F.3d 1541, 1551-53 (8th Cir. 1995).

Rather than vitiating state regulation concerning harassing calls and faxes, Congress should be strengthening it. While preemption of such state laws has not been a problem up to this point, Indiana’s recent litigation experience demonstrates that states and their residents cannot take their residential privacy protections for granted any longer.

The best way for Congress to eliminate uncertainty concerning preemption of state telephone and fax harassment laws is to remove the word “intrastate” from 47 U.S.C. § 227(f)(1), as follows:

(f) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section

or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive requirements or regulations on, or which prohibits--

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

This modification would eliminate any textual distinction between interstate and intrastate laws, and thereby clarify that *no* state laws are preempted by the TCPA, even as applied to interstate calls. And while it would be even better to go the next step and clarify that nothing in the Federal Communications Act restricts interstate application of state laws regulating telephone harassment, the slight modification suggested above should suffice to convince telemarketers and courts alike that states have every right to preclude invasions of residential privacy, and impositions of costs on unwitting consumers, by means of telephones and fax machines.