

MITCH McCONNELL  
KENTUCKY

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## United States Senate

COMMITTEES:  
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AGRICULTURE  
APPROPRIATIONS  
SUBCOMMITTEE ON FOREIGN OPERATIONS  
RANKING MEMBER  
JUDICIARY

June 14, 2002

The Honorable Timothy Muris  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

2118125

Dear Chairman Muris:

I write to share with you concerns regarding the Federal Trade Commission's (FTC) proposal to establish a federal "do-not-call" list and the potentially harmful impact this proposal might have on legitimate charities.

As you well know, America is a generous and compassionate nation. In times of crisis, the American people open their hearts and their pocketbooks to aid their fellow citizens in need. Tragically, this support has proven an irresistible target to criminals who prey upon the generous and good-hearted nature of Americans. Each year, well-meaning Americans unwittingly contribute an estimated \$1.5 billion to fraudulent charities. All too often, these criminals prey on their well-intentioned victims by posing as representatives of law enforcement or firefighter organizations. Not only do these criminals steal valuable resources from worthy recipients, but they erode the trust of the American people in legitimate charitable organizations, like the Fraternal Order of Police (FOP).

In an effort to protect generous citizens and the charitable institutions they support, I was proud to introduce the Crimes Against Charitable Americans Act and secure its inclusion in the USA PATRIOT Act. This legislation strengthens federal laws regulating charitable phone solicitations. The bill also takes important steps to combat deceptive charitable solicitations by requiring telemarketers to make common sense disclosures such as the charity's identity and address at the beginning of the phone call.

As you know, several months after the enactment of the Crimes Against Charitable Americans Act, the FTC proposed the establishment of a federal, centralized "do-not-call" registry. If this new rule is adopted, individuals could place their names on the "do-not-call" list, and telemarketers would be prohibited from calling them. It is worth noting that the FTC's proposed "do-not-call" list would not apply to charitable or benevolent organizations, but would apply to any authorized agents they may hire to solicit donations.

The FTC proposed this new regulation on January 22, 2002 – almost three months after the USA PATRIOT Act was signed into law. When Congress enacted this legislation, it did not envision, nor did it call for, the FTC to propose a federal "do-not-call" list, and certainly not a list that applied to charitable organizations or their authorized agents. Since these regulations were first proposed, I have heard from several charitable organizations, many of whom supported the Crimes Against Charitable Americans Act, that are deeply concerned that this new, unanticipated

FTC requirement will hinder their ability to raise charitable contributions. I have enclosed several letters that I recently received from the Grand Lodge Fraternal Order of Police, the Kentucky Professional Firefighters and the Kentucky Veterans of Foreign Wars that highlight these concerns. I share these concerns and have informed these organizations that the Crimes Against Charitable Americans Act never intended, called-for, required, or even envisioned the "do-not-call" list that the FTC is now proposing.

Thank you in advance for your attention to this matter. As the author of the Crimes Against Charitable Americans Act, I can assure you that Congress intended to strengthen and protect our nation's charities, not weaken them.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitch McConnell", written in a cursive style.

MITCH McCONNELL  
UNITED STATES SENATOR

MM:sr



**GRAND LODGE  
FRATERNAL ORDER OF POLICE®**

309 Massachusetts Ave., N.E.  
Washington, DC 20002  
Phone 202-547-8189 • Fax 202-547-8190

STEVE YOUNG  
PRESIDENT

JAMES O. PASCO, JR  
EXECUTIVE DIRECTOR

26 March 2002

Mr. Timothy J. Muris  
Chairman, Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**RE: Telemarketing Rulemaking – Comment, FTC File No. R411001**

Dear Mr. Chairman:

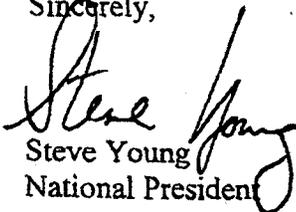
Attached to this letter, please find the written comments of the Grand Lodge, Fraternal Order of Police regarding the proposed amendments to the Telemarketing Sales Rule as published in the 22 January *Federal Register*.

In short, the Fraternal Order of Police strongly opposes the establishment of a national "do-not-call" law that will not be universally applied. We further believe that government should not restrict the right of nonprofit organizations to deliver their message and seek public support based upon who compensates the caller. The proposal put forward by the Commission will not cover all calls, and as a result, will only act to the legal and economic detriment of those actually affected while continuing to allow calls to be made by classes of callers that generate the most complaints.

In addition to the submission of written comments, we would also respectfully request the opportunity to appear before the Commission to testify on this subject during the public forum scheduled for 5 – 7 June 2002.

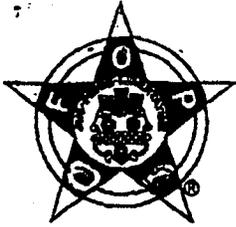
On behalf of the more than 300,000 members of the Fraternal Order of Police, I thank you in advance for your attention to our concerns. Please do not hesitate to contact me, or Executive Director Jim Pasco, through my Washington office if we can provide you with any additional information or to schedule our appearance before the Commission.

Sincerely,

  
Steve Young  
National President

Enclosure

CC: Ted Cruz, Director, Office of Policy Planning



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STEVE YOUNG  
PRESIDENT

**GRAND LODGE FRATERNAL ORDER OF POLICE**

JAMES O. PASCO, JF  
EXECUTIVE DIRECTOR

**STATEMENT OF POSITION**

**ON THE**

**PROPOSED AMENDMENTS BY THE FTC TO THE  
TELEMARKETING SALES RULE**

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**STATEMENT OF POSITION**

The Grand Lodge Fraternal Order of Police ("FOP") and its 300,000 members nationwide oppose the establishment of a national "do-not-call" law that will not be universally applied.

Government should not restrict the right of nonprofit organizations to deliver their message and seek public support based upon who compensates the caller.

The proposal will not cover all calls, and as a result will only act to the legal and economic detriment of those actually affected and, at the same time, will continue to allow calls to be made by classes of callers that generate the most complaints.

The FOP further believes the fact that certain callers are regulated, and therefore would be exempted from the national "do-not-call" list creates a series of constitutional issues.

**ORGANIZATIONAL STATEMENT**

The Grand Lodge Fraternal Order of Police was incorporated on November 15, 1915, and given tax-exempt status under § 501(c)(8) of the Internal Revenue Code. Currently, the organization has 300,000 members in 42 state lodges, and approximately 2,000 local lodges. The membership is composed of any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency which may be eligible for membership.

The purpose of the FOP is to promote loyalty and allegiance to the United States, and to promote and foster the enforcement of law and order. The organization also works with its membership to improve proficiency of its members in the performance of their duties, and to encourage fraternal, educational, charitable and social activities among law enforcement officers.

A wide range of programs are sponsored through fundraising activities and membership dues. Included among the FOP's programs are life insurance for members, legal defense fund, legislative advocacy, children's scholarships, professional training programs, and community commitment to a wide range of charitable activities.

## FUNDRAISING BACK GROUND

The National FOP and its local memberships depend upon grass roots fundraising to support the organization and enable it to create membership benefits, as well as sponsor community-wide program services. The organization mandates that telemarketing service bureaus hired by it maintain on a voluntary basis a "do-not-call" list, placing the names of those persons who ask on said list.

The use of an outside commercial telemarketing service bureau is a practical and economic necessity. Public policy dictates that it would be inappropriate for public safety personnel themselves to call residents of their community and seek financial support. Indeed, in some jurisdictions it is illegal to do so. Economically, the organization cannot afford to purchase, train and provide oversight on an in-house telemarketing effort; nor does the membership have the equipment or the skill necessary to conduct its own fundraising campaigns.

## LEGAL ISSUES

There are a series of legal issues which mitigate against the adoption of the amendments to the Telemarketing Sales Rule as to extend it to calls made on behalf of nonprofit organizations. The purpose of creating a national "do-not-call" list is ostensibly to protect the privacy of individuals from unwanted telephone calls. The proposed amendments to the Rule will not accomplish that goal. The FTC has no jurisdiction over telephone calls made by long distance companies, FDIC regulated banks, nonprofits, and other non-regulated commercial callers. A strong body of law already exists holding that government is not allowed to favor one telephone call over another based upon the content of the message. *See Pearson v. Edgar*, 153 F.3d 397 (7<sup>th</sup> Cir. 1998).

Because the FTC does not regulate long distance companies and banks, for example, calls from commercial interests will be favored over calls made on behalf of nonprofit. Government is forbidden from favoring commercial speech over constitutionally protected speech. *See Metro Media, Inc. v City of San Diego*, 453 U.S. 490, 512 (1980).

The appeal for public support made by a nonprofit either directly or indirectly through a professional representative is a form of fully protected speech and is entitled to the full plenary protection of the First Amendment to the Constitution of the United States. *See Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).

The fact that nonprofits using paid employees to make the same calls will not be subject to the "do-not-call" list creates a prohibited prior restraint on the nonprofit organizations that do not have the resources to use employees. *See Riley, supra*.

## STATE LAW CONFLICT

As aforementioned, approximately twenty states have either passed or are in the process of passing some form of a "do-not-call" law. By the end of 2002 that number is expected to increase to thirty. With few exceptions, most of those laws exempt calls made on behalf of nonprofit organizations. The proposed revisions to the Telemarketing Sales Rule to establish a national "do-not-call" list would create a conflict with the laws of the various states.

## UNINTENDED EFFECTS

The way the Telemarketing Sales Rule would now be applied to organizations like the FOP, working with professional representatives in their fully protected activity of seeking public support, would take regular supporters of the organization and place them out of reach. Individuals wishing to minimize or eliminate calls received from such popular annoyances as long distance companies, do so without recognizing the fact that they have placed themselves in a position whereby they cannot be called by organizations with which they have a prior existing relationship.

An added layer of "do-not-call" regulation will also have the unintended effect of raising the cost of fundraising by increasing compliance costs, thereby reducing the net amount of funds available for program services.

## SOURCES OF TELEMARKETING COMPLAINTS

Because of the lack of jurisdiction over certain callers, the FTC's proposed national "do-not-call" law would only stop some - not all unwanted calls.

The National Association of Attorneys General, as well as the National Fraud Information Center and other watchdog agencies, publish on a regular basis a list of the top ten consumer complaints. Invariably, those complaints include work at home schemes, prizes and sweepstakes, telephone slamming, telephone cramming, credit card sales calls, home repair and services, and time shares. Never has the list ever included telephone calls made on behalf of nonprofit organizations.

## REQUESTED AMENDMENT

The amendments to the Telemarketing Sales Rule proposed by the FTC should be revised so that they do not apply to calls made by or on behalf of nonprofit organizations that are not selling goods or services.

Many of the issues raised by the proposed amendments are the subject matter of a federal declaratory judgment action brought by a number of nonprofit organizations in Indiana. The lawsuit challenges the constitutionality of a state-imposed "do-not-call" law that provides no exceptions for calls to former supporters of nonprofit organizations or calls made on their behalf, but does provide

exceptions for calls by newspapers of general circulation, insurance agencies, debt collectors and politicians seeking financial support for political campaigns. The Telemarketing Sales Rule, which does not currently apply to calls made by or on behalf of nonprofit organizations not selling goods or services, should not be amended to include those calls until the constitutional validity of such action has been determined.

# Kentucky Professional Firefighters

400-402 Bakers Lane • Louisville, Kentucky 40214-4751  
502-366-5227 • Fax 502-366-0480

April 17, 2002

02 APR 30 AM 9:43

Honorable Mitch McConnell  
United States Senate  
Washington, DC 20510

Dear Senator McConnell:

I am writing to you on behalf of the Kentucky Professional Fire Fighters, to express our objection to the Federal Trade Commission's proposal to amend the telemarketing Sales Rule. The proposal application of a national "do not call" registry to our organization is unfair, unwise and unworkable.

As Fire fighters, we make it our business to serve our communities to the greatest extent possible. Our Fire Fighter organization is a non-profit entity that relies extensively upon small gifts from a large number of people to support numerous charitable activities. Through such contributions, we have been able to do so much for our Fire Fighters and their communities such as:

Scholarship fund for Fire Fighters Children  
Children's Fire Safe Trailer (Northern KY)  
Ramey Estep Boys Home (Ashland)  
Clothe A Child (Middlesboro)  
Muscular Dystrophy Association  
Toys for Tots (Frankfort)

Just to name a few. We also send our members to many different seminars: Health and Safety, Educational, Human Relations and Legislative to better prepare themselves as first responders of their community.

Sir, I am encouraging you to request the FTC to allow fire and police organizations to continue utilizing professional fund raiser without being subject to a do not call list.

I hope you can help us with this issue it is very important to the continuance of our organization.

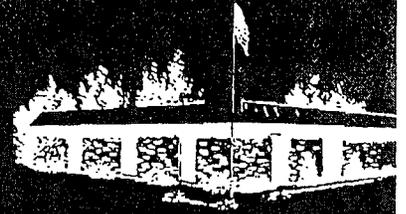
Sincerely,



Bruce Roberts, President  
Kentucky Professional Fire Fighters



## Veterans of Foreign Wars of the United States



Department of Kentucky  
Office Of  
Adjutant-Quartermaster

June 3, 2002

The Honorable Mitch McConnell  
United States Senate  
Washington, DC 20510

Dear Senator McConnell

On behalf of our more than 30,000 members of the Department of Kentucky Veterans of Foreign Wars (VFW) and its Ladies Auxiliary members, I would like to request your assistance with a matter of critical and urgent concern to us.

I am asking for your help concerning the Federal Trade Commission ("FTC") Notice of Proposed Rule Making to Amend the FTC's Telemarketing Sales Rule, 16 CFR part 310. The Telemarketing Sales Rule prohibits specific deceptive and abusive telemarketing acts or practices and is currently limited in its application to telemarketing for commercial purposes only. The proposed modifications extend application of the Telemarketing Sales Rule to telephone solicitation by our professional fundraiser on behalf of our organizations. More importantly, the proposed rule making creates a national "do-not-call" registry which would enable consumers nationwide to eliminate not only commercial but also calls on behalf of charities and nonprofits including the VFW by simply advising the FTC of their desire to be included on the do-not-call registry.

The proposed rule if implemented in its present form will have a highly adverse impact on the fundraising efforts of the nonprofit community and specifically on efforts to seek financial support on behalf of nonprofit organizations like the VFW. We are asking for your support in altering this proposed Amendment to allow professional fundraisers to continue calling on our behalf and to continue to have access to donors with whom they have had a previous history.

I cannot overestimate the devastating impact the proposed rule will have on the VFW. On behalf of our members, I ask that you actively oppose the foregoing provisions of the FTC rule. Please, write to FTC and speak with them as well to influence them on behalf of nonprofit and charitable organizations who will be devastated otherwise. The VFW, Department of Kentucky is part of a coalition of nearly 300 national, state and local nonprofit organizations that have filed detailed comments with the FTC outlining our reasons for opposing the FTC rule. I would be happy to provide this information to you. I would also

welcome the opportunity to discuss this matter further with either you or your staff at your convenience. Thank you for your consideration.

Sincerely,



Cecil W. Caruso  
State Adjutant/Quartermaster  
Department of Kentucky - VFW