

March 18, 2005

NORTH DAKOTA'S DO NOT CALL LAW SURVIVES LEGAL CHALLENGE

BISMARCK – A Virginia company has paid \$20,000 for violating the state's Do Not Call law, announced Attorney General Wayne Stenehjem.

Burleigh county district court found FreeEats.com, Inc. violated the Do Not Call law when it made prerecorded-message calls to North Dakota telephone subscribers last fall. The company claimed the calls were an effort to conduct a "get out the vote" campaign for the November elections. State law prohibits the use of prerecorded messages.

FreeEats.com challenged North Dakota's law, claiming federal law, which treats prerecorded messages differently, should apply. Judge Gail Hagerty disagreed, finding federal law did not preempt North Dakota's law, and that FreeEats violated the law. FreeEats agreed to pay a penalty of \$10,000 for the violations and another \$10,000 for the Attorney General's costs and attorney fees.

"This case is a victory for the people of North Dakota," Stenehjem said, "and affirms North Dakota's right to enact its own laws to protect citizens' health, safety and welfare." Stenehjem continued, "Do Not Call laws are under attack all over the nation and North Dakota is proud to help lead the fight to protect consumers from uninvited and annoying telemarketing calls."

FreeEats also filed a petition with the Federal Communications Commission in Washington, D.C., asking the Commission to declare North Dakota's law preempted by federal law. The Attorney General is opposing the petition, and filed a brief which was joined by Attorneys General from 33 states and territories. A decision on the petition is pending.