



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 04-3185

Released: October 4, 2004

**CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
AMERICAN TELESERVICES ASSOCIATION, INC. PETITION FOR DECLARATORY
RULING ON PREEMPTION OF NEW JERSEY TELEMARKETING RULES**

CG Docket No. 02-278

Comments Due: 30 Days After Publication in the Federal Register

Reply Comments Due: 45 Days After Publication in the Federal Register

On August 24, 2004, American Teleservices Association, Inc. (“ATA”) filed a petition for declaratory ruling, asking the Commission to preempt certain provisions of the New Jersey Consumer Fraud Act and New Jersey Administrative Code (“New Jersey Rules”) relating to telemarketing.¹ ATA contends that the New Jersey Rules are more restrictive than the rules established by the Commission under the Telephone Consumer Protection Act (TCPA).² More specifically, ATA argues that the New Jersey Rules are inconsistent with the Commission’s “established business relationship” exemption, fail to provide a personal relationship exemption, and impose stricter identification requirements on telemarketers.³ Furthermore, ATA indicates that the New Jersey Rules are not limited to intrastate telemarketing, but apply to all telemarketing calls to New Jersey consumers regardless of where the calls originate.⁴ ATA therefore requests that the Commission preempt those provisions of the New Jersey Rules which are more restrictive than the Commission’s rules as they relate to interstate telemarketing.⁵

¹ See Petition for Declaratory Ruling, CG Docket No. 02-278, filed August 24, 2004 (*Petition*).

² See generally, *Petition*.

³ See *Petition* at 4-10.

⁴ See *Petition* at 4.

⁵ See *Petition* at 2-4, 11. See also, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

Pursuant to Sections 1.415 and 1.419 or the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 30th day after publication of this *Public Notice* in the Federal Register, and reply comments may be filed on or before the 45th day after publication of this *Public Notice* in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclosed proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street,

SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Public Notice* can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb>.

FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-2512 (voice), Kelli.Farmer@fcc.gov.

-FCC-