



# PUBLIC NOTICE

Federal Communications Commission  
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## CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON EXPRESS CONSOLIDATION, INC. PETITION FOR DECLARATORY RULING ON PREEMPTION OF FLORIDA 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 July 28, 2004, Express Consolidation, Inc. (“Express” or “Petitioner”) filed a petition for declaratory ruling asking the Commission to preempt a Florida telemarketing law, Florida Statute, Section 501.059 (“Florida Statute”).<sup>1</sup> According to Petitioner, Express has been charged in a complaint by the Florida Department of Agriculture and Consumer Services with violating the Florida Statute, which restricts the making of telephonic sales calls to Florida citizens whose names appear on the state’s quarterly “no sales solicitation calls listing.” The Florida law also restricts the use of automatic dialing systems and artificial or prerecorded messages to make sales calls. Express contends that the Florida Statute is inconsistent with the Telephone Consumer Protection Act (TCPA) by placing more onerous restrictions on the making of interstate telephone calls by a tax-exempt nonprofit organization.<sup>2</sup> Express indicates that, unlike the Florida Statute, the TCPA exempts calls made by tax-exempt nonprofit organizations from the restrictions on “telephone solicitations.”<sup>3</sup> Express further explains that the calls that are the basis of the state’s enforcement action are made on behalf of Express, a nonprofit corporation with offices in Florida, by a California company.<sup>4</sup> Express maintains that the TCPA authorizes a state to implement more restrictive regulations only with respect to intrastate calls; therefore, the state law should be preempted.<sup>5</sup>

<sup>1</sup> See Petition for Declaratory Ruling, CG Docket No. 02-278, filed July 28, 2004 (*Petition*).

<sup>2</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

<sup>3</sup> See *Petition* at 1.

<sup>4</sup> See *Petition* at 2.

<sup>5</sup> See *Petition* at 1.

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 30<sup>th</sup> day after publication of this *Public Notice* in the Federal Register, and reply comments may be filed on or before the 45<sup>th</sup> 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](mailto: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 12<sup>th</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> Street,

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

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

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