



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 04-3836

Released: December 07, 2004

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CONSUMER BANKERS ASSOCIATION PETITION FOR DECLARATORY RULING ON PREEMPTION OF WISCONSIN 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 November 19, 2004, Consumer Bankers Association (“CBA” or “Petitioner”) filed a petition for declaratory ruling asking the Federal Communications Commission (“Commission”) to preempt certain sections of the Wisconsin Statutes and Wisconsin Administrative Code (“Wisconsin laws”) as applied to interstate telephone calls.¹ CBA contends that the Wisconsin laws are significantly more restrictive than the Commission’s telemarketing rules.² More specifically, CBA argues that the Wisconsin laws are inconsistent with the Commission’s regulations which permit telephone solicitation calls to persons with whom the caller has an “established business relationship” (EBR), even where the called party’s number has been entered on the national do-not-call registry.³

CBA contends that the Wisconsin laws prohibit certain categories of calls that are within the scope of the Commission’s EBR exception, including: (1) calls made to residential subscribers who have made an inquiry or application regarding products or services, but have not

¹ See Petition for Declaratory Ruling, CG Docket No. 02-278, filed November 19, 2004 (*Petition*). CBA indicates that Wisconsin’s statutory restrictions on telephone solicitations are codified at Wis. Stat. § 100.52 (2003), and the implementing regulations are codified at Wis. Admin. Code, Agriculture, Trade and Consumer Protection, §§ 127.02-127.20 and 127.80-127.84. See *Petition* at 2.

² See *Petition* at 3.

³ See *Petition* at 2. (citing 47 C.F.R. § 69.1200(c)(2)). CBA notes that the Commission’s rules define an EBR as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(3). See *Petition* at 2

expressly asked to be called in response to that inquiry or application; (2) calls made to residential subscribers who have engaged in a completed purchase or transaction with the caller; (3) calls made to existing customers for the purpose of offering additional or different products from those the seller already is providing to the customer; and (4) calls from an affiliate of the entity with whom the residential customer has an existing relationship.⁴ CBA explains that “[t]hese inconsistencies between federal law and the Wisconsin statute subject CBA’s members to ‘multiple, conflicting regulations’ in the area of interstate telemarketing... .” Therefore, CBA requests a declaratory ruling that the identified provisions of Wisconsin’s telemarketing statute and implementing regulations are preempted.⁵

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.

⁴ *See Petition* at 3.

⁵ *Petition* at 3, 7 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14064, para. 84 (2003)).

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-