



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON NATIONAL CITY MORTGAGE CO. PETITION FOR EXPEDITED 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 November 22, 2004, National City Mortgage Co. (“NCMC” or “Petitioner”) filed a petition for expedited declaratory ruling asking the Federal Communications Commission (“Commission”) to preempt a Florida telemarketing law, Florida Statute, Section 501.059 (“Florida statute”).¹ According to Petitioner, NCMC has received a notice from the Florida Department of Agriculture & Consumer Services which indicates that a prerecorded message call initiated by NCMC violated section 501.059(7)(a) of the Florida statute.² NCMC explains that the Florida statute prohibits such prerecorded calls and makes no exception to this restriction for calls that are placed to persons with whom the caller has an established business relationship. In addition, NCMC explains that its calls into Florida are interstate calls.³ NCMC contends that the Florida statute is inconsistent with the Commission’s rules that permit calls using prerecorded voice messages to any person with whom the caller has an established business relationship at the time the call is made; therefore, NCMC argues that the Florida statute should be preempted as applied to interstate calls.⁴

In addition, NCMC indicates that it has been informed by the Florida Department of Agriculture & Consumer Services that the complaint is still pending and might become the basis

¹ See Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, filed November 22, 2004 (*Petition*).

² See *Petition* at 2 and Attachment 1.

³ See *Petition* at 2. NCMC stated in a letter to the Florida Department of Agriculture & Consumer Services that calls on its behalf were placed by a third-party telemarketer whose call center is located in California. See *Petition*, Attachment 2.

⁴ See *Petition* at 2-3 (citing 47 C.F.R. § 64.1200(a)(2), (a)(2)(iv)).

for further enforcement proceedings against NCMC. NCMC maintains that “the State of Florida’s apparent intention to enforce th[e] prohibition as to interstate calls subjects NCMC to the ‘multiple, conflicting regulations’ that the Commission has declared its intention to avoid.”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.

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).

⁵ *Petition* at 4.

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.

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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.

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