

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Rules and Regulations Implementing the ) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991 )
)
Request of State Farm Mutual Automobile )
Insurance Company for Clarification and )
Declaratory Ruling )

DECLARATORY RULING

Adopted: August 16, 2005

Released: August 17, 2005

By the Acting Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we grant a Request for Clarification and Declaratory Ruling filed by State Farm.1 Specifically, we clarify that State Farm’s “exclusive agents” may rely on the “established business relationship” (EBR) exemption of the Telephone Consumer Protection Act (TCPA)2 to make telephone solicitations on behalf of State Farm to consumers on the national do-not-call list.3 We reiterate, however, that once a consumer makes a company specific do-not-call request, whether to State Farm or any of its agents telemarketing on behalf of State Farm, State Farm and all of its agents must

1 State Farm Mutual Automobile Insurance Company Request for Clarification and Declaratory Ruling filed May 13, 2005 (State Farm Petition).

2 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq. Section 227(a)(3) exempts from the term telephone solicitation a call “to any person with whom the caller has an established business relationship.” See 47 U.S.C. § 227(a)(3).

3 Section 64.1200(f)(3) of our rules defines the term “established business relationship” 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 immediately preceding the date of the call, which relationship has not been previously terminated by either party.

See 47 C.F.R. § 64.1200(f)(3)

honor that request and not call the consumer again to make a telephone solicitation.<sup>4</sup>

## II. BACKGROUND

### A. Telephone Consumer Protection Act of 1991

2. On December 20, 1991, Congress enacted the TCPA, as codified in section 227 of the Communications Act of 1934, as amended (the Act), in an effort to address a growing number of telephone marketing calls and certain telemarketing practices Congress found to be an invasion of consumer privacy.<sup>5</sup> In relevant part, the TCPA required the Commission to “initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights”<sup>6</sup> and specifically authorized the Commission to consider “the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations.”<sup>7</sup> Section 227(a)(3) of the Act expressly exempts from the definition of a telephone solicitation calls made to persons with whom the caller has an “established business relationship.”<sup>8</sup> Congress determined that such an exemption was necessary to allow companies to communicate by telephone with their existing customers.<sup>9</sup>

3. On July 3, 2003, the Commission revised the TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations.<sup>10</sup> In particular, the Commission established a national do-not-call registry that would be jointly administered by the Federal Trade Commission (FTC) and this Commission.<sup>11</sup> The national registry, which went into effect on October 1, 2003, prohibits, with limited exceptions, the making of any telephone solicitation to a residential subscriber that has registered his or her telephone number on the national do-not-call registry.<sup>12</sup> Consistent with the FTC, the Commission adopted an established business relationship exemption to the prohibition on making telephone solicitations to residential telephone subscribers on the national do-not-call list, but limited the duration of that exemption to 18 months following a purchase or

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<sup>4</sup> The Commission’s rules require that a company specific do-not-call request “be honored for 5 years from the time the request is made.” See 47 C.F.R. § 64.1200(d)(6).

<sup>5</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

<sup>6</sup> 47 U.S.C. § 227(c)(1).

<sup>7</sup> 47 U.S.C. § 227(c)(3).

<sup>8</sup> 47 U.S.C. § 227(a)(3).

<sup>9</sup> See H.R. Rep. No. 102-317 at 13-14.

<sup>10</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*). On March 11, 2003, the Do-Not-Call Implementation Act was signed into law, requiring the Commission to issue a final rule in its ongoing TCPA proceeding within 180 days of enactment, and to consult and coordinate with the Federal Trade Commission to “maximize consistency” with the rules promulgated by the FTC. See Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101.

<sup>11</sup> *2003 TCPA Order*, 18 FCC Rcd at 14034, para. 28.

<sup>12</sup> 47 C.F.R. § 64.1200(c)(2). See also *Mainstream Marketing Services, Inc. v. Federal Trade Comm’n*, 358 F.3d 1228 (10<sup>th</sup> Cir. 2004) (upholding the constitutionality of the national do-not-call registry), *cert. denied*, 2004 WL 2050134 (U.S. Oct. 4, 2004) (No. 03-1552).

transaction and three months following an inquiry or application, unless the consumer terminates the EBR by, for example, making a company specific do-not-call request.<sup>13</sup> The national do-not-call registry supplemented existing rules that required entities making telephone solicitations to maintain company specific do-not-call lists.<sup>14</sup>

4. On February 18, 2005, the Commission released a Second Order on Reconsideration addressing certain issues raised in petitions for reconsideration of the *2003 TCPA Order*.<sup>15</sup> In relevant part, the Commission clarified that: (1) the existence of a financial agreement, including bank accounts, loans, insurance policies and mortgages, constitute ongoing business relationships that permit a company to contact consumers for the duration of the financial agreement or contract (and for an additional 18 months following the termination of the financial agreement); and (2) intermediaries, such as insurance agents and mortgage brokers, may call those consumers with whom they have arranged an insurance policy or mortgage for a period of 18 months from the time the transaction is completed, *i.e.*, the date that the broker/agent arranged the mortgage or insurance deal.<sup>16</sup> The Commission found that independent brokers and agents often play an important role in these types of financial transactions and that, in many circumstances, the consumer would expect to receive a call from them within a reasonable period of time after the transaction.<sup>17</sup> The Commission noted, however, that unlike the bank or lender with which a consumer has an ongoing relationship based on an account or loan, the mortgage broker or insurance agent typically is only involved in the original transaction.<sup>18</sup> Therefore, the Commission concluded that to allow a broker or agent to make a telephone solicitation for the duration of a loan or term of the policy based on the origination of the transaction would conflict with the underlying goal of the do-not-call rules to protect consumer privacy rights.<sup>19</sup>

#### **B. State Farm Petition**

5. On May 13, 2005, State Farm sought clarification that State Farm's exclusive agents "are permitted to telemarket to State Farm's customers on State Farm's behalf so long as State Farm otherwise has a valid 'established business relationship' (EBR) with the customer."<sup>20</sup> State Farm indicates that it depends almost entirely on 16,000 independent contractor insurance agents – who have an exclusive agency relationship with State Farm – to both represent the company to consumers and provide service to policyholders.<sup>21</sup> As a result, State Farm contends that its agents are similarly situated to other parties that are permitted by the Commission to make telephone solicitations pursuant to an ongoing EBR between a

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<sup>13</sup> *2003 TCPA Order*, 18 FCC Rcd at 14078-80, para. 112. *See also* 47 C.F.R. § 64.1200(f)(3).

<sup>14</sup> *See* 47 C.F.R. § 64.1200(d)(6).

<sup>15</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788 (2005) (*Second Order on Reconsideration*).

<sup>16</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798, paras. 26-27. These restrictions apply when the agent is not otherwise authorized to make telephone solicitations on behalf of the business entity.

<sup>17</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798, para. 27.

<sup>18</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798, n.77.

<sup>19</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798, para. 27.

<sup>20</sup> State Farm Petition at 1.

<sup>21</sup> State Farm Petition at 2.

consumer and a financial service company.<sup>22</sup> No opposition was filed to State Farm's petition.<sup>23</sup>

### III. DISCUSSION

6. We clarify that State Farm's exclusive agents are permitted to rely on the EBR of State Farm to make telephone solicitations on behalf of State Farm so long as State Farm has a valid EBR with the customer.<sup>24</sup> State Farm's agents are authorized to perform almost all communications with the customers of State Farm including telemarketing on behalf of State Farm.<sup>25</sup> As State Farm notes, its agents are responsible for answering policyholders' questions, providing updates to consumers when adjustments in coverage may be appropriate, soliciting applications for coverage, submitting claims, and in some cases, paying claims.<sup>26</sup> Moreover, State Farm itself conducts no "in-house" telemarketing.<sup>27</sup> Thus, in contrast to insurance agents or brokers that are involved only in the original transaction, State Farm's exclusive agents perform the same services for State Farm as employees of companies that "in-source" customer service functions.<sup>28</sup> As discussed in the *Second Order on Reconsideration*, in the case of an insurance policy, the EBR may extend for the duration of the policy and for an additional 18 months following the termination of that policy.<sup>29</sup> In addition, we note that this clarification is consistent with the Commission's prior conclusion that third party "telemarketers may rely on the seller's EBR to call an individual consumer to market a seller's services and products."<sup>30</sup>

7. We take this opportunity to reiterate that a company on whose behalf a telephone solicitation is made bears the responsibility for any violation of our telemarketing rules and calls placed by a third party on behalf of that company are treated as if the company itself placed the call.<sup>31</sup> In addition, we note that consumers may terminate the EBR for purposes of telemarketing calls at any time by making a company specific do-not-call request.<sup>32</sup> Once the consumer makes a company specific do-not-call request, whether to the company or third party, the company and its third party telemarketer may not call

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<sup>22</sup> State Farm Petition at 2-3. In addition, State Farm notes that its agents make the same type of customer calls on behalf of State Farm as third-party telemarketing agents hired by financial service companies to make calls under the EBR exception. State Farm Petition at 3. *See also 2003 TCPA Order*, 18 FCC Rcd at 14083, para. 118.

<sup>23</sup> *See* Petitions for Clarification of Action in Rulemaking Proceeding, Public Notice, Report No. 2716 (rel. June 8, 2005).

<sup>24</sup> *See 2003 TCPA Order*, 18 FCC Rcd at 14083, para. 118.

<sup>25</sup> *See* State Farm Petition at 2.

<sup>26</sup> State Farm Petition at 2.

<sup>27</sup> State Farm Petition at 2.

<sup>28</sup> State Farm Petition at 2-3.

<sup>29</sup> *Second Order on Reconsideration*, 20 FCC Rcd at 3798, para. 26.

<sup>30</sup> *2003 TCPA Order*, 18 FCC Rcd at 14083, para. 118. We also note that nothing we do herein negates the Commission's conclusion in the *Second Order on Reconsideration* that independent agents or brokers involved only in the original transaction are limited to an 18-month period following that transaction during which they may rely upon an EBR to contact consumers on the national do-not-call list.

<sup>31</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 at 12397, para. 13 (1995).

<sup>32</sup> *See* 47 C.F.R. § 64.1200(f)(3)(i).

the consumer again on behalf of that company to make a telephone solicitation regardless of whether the consumer continues to do business with the company.<sup>33</sup>

#### IV. PROCEDURAL ISSUES

##### A. Materials in Accessible Formats

8. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This Declaratory Ruling can also be downloaded in Word and Portable Document Format at <http://www.fcc.gov/cgb/policy>.

##### B. Ordering Clauses

9. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227 and 303(r); and Section 64.1200 of the Commission's rules, 47 C.F.R. § 64.1200, this Declaratory Ruling in CG Docket No. 02-278 IS ADOPTED as set forth herein.

10. IT IS FURTHER ORDERED, that the Request for Clarification and Declaratory Ruling filed by State Farm Mutual Automobile Insurance Company in CG Docket 02-278 on May 13, 2005, IS GRANTED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai  
Acting Chief  
Consumer & Governmental Affairs Bureau

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<sup>33</sup> See 2003 TCPA Order, 18 FCC Rcd at 14086-87, para. 124.