

requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a *Declaratory Ruling* from the Commission. 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 FR 24121, May 1, 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, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 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, SW., Washington, DC 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 CFR 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 CFR 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 CFR 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, SW., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: <http://www.bcpweb.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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This document can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>.

### Synopsis

On November 19, 2004, Consumer Bankers Association (CBA) filed a *Petition for Declaratory Ruling* asking the Commission to preempt certain sections of the Indiana Revised Statutes and Indiana Administrative Code as it relates to interstate telephone calls. Specifically, CBA requests that the Commission preempt the Indiana laws to the extent they prohibit telemarketing calls to persons and entities with which the caller has an established business relationship as defined in the Commission's rules. CBA indicates that the Indiana laws provide that a telephone solicitor may not make a telephone sales call to a telephone number if that number appears on the state's do-not-call list. According to CBA, Indiana's prohibition on calls to numbers on the Indiana do-not-call list is subject to exceptions that partially overlap with, but are substantially narrower than the "established business relationship" ("EBR") of the

Commission's telemarketing rules. CBA contends that, unlike the Commission's EBR definition, the Indiana exceptions: (1) Do not include relationships based upon a consumer's past inquiry or application, during the three months preceding the call, regarding the party's products or services; (2) do not include calls to persons with whom the caller has engaged, within 18 months prior to the call, in a purchase or transaction as to which payment has been made or performance completed; and (3) do not expressly permit an EBR to extend to any affiliated entities that the consumer reasonably would expect to be included within that category.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04-28417 Filed 12-30-04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278; DA 04-3836]

### Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for declaratory ruling; comments requested.

**SUMMARY:** This document seeks comment on a *Petition for Declaratory Ruling* filed by the Consumer Bankers Association asking the Commission to preempt certain sections of the Wisconsin Statutes and Wisconsin Administrative Code as applied to interstate telephone calls.

**DATES:** Comments are due on or before February 2, 2005, and reply comments are due on or before February 17, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See supplementary information for further filing instructions.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, CG Docket No. 02-278, DA 04-3836, released December 7, 2004. On July 3, 2003, the Commission released a *Report and Order (2003 TCPA Order)*, 68 FR 44144, July 25, 2003. In the 2003

*TCPA Order*, the Commission stated its belief that any state regulation of interstate telemarketing calls that differed from our rules under section 227 almost certainly would conflict with and frustrate the federal scheme and would be preempted. The Commission will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a Declaratory Ruling from the Commission. 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 FR 24121, May 1, 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, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 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,

SW., Washington, DC 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.

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### Synopsis

On November 19, 2004, Consumer Bankers Association (CBA) filed a *Petition for Declaratory Ruling* asking the Commission to preempt certain sections of the Wisconsin Statutes and Wisconsin Administrative Code as it relates to interstate telephone calls. CBA contends that the Wisconsin laws are significantly more restrictive than the Commission's telemarketing rules. 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. 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 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. 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.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278; DA 04-3837]

### Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for declaratory ruling; comments requested.

**SUMMARY:** This document seeks comment on a *Petition for Expedited Declaratory Ruling* filed by the National City Mortgage Co. (NCMC), asking the Commission to preempt a Florida telemarketing law, Florida Statute Section 501.059, prohibiting prerecorded messages without consent.

**DATES:** Comments are due on or before February 2, 2005, and reply comments are due on or before February 17, 2005.