



PUBLIC NOTICE

Federal Communications Commission
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DA 04-3187

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CCADVERTISING PETITION FOR DECLARATORY RULING ON PREEMPTION OF NORTH DAKOTA TELEMARKETING RULES

CG Docket No. 02-278

Comments Due: 20 Days After Publication in the Federal Register

Reply Comments Due: 30 Days After Publication in the Federal Register

On September 13, 2004, FreeEats.com, Inc., dba ccAdvertising (“Petitioner” or “ccAdvertising”) filed a petition for expedited declaratory ruling, asking the Commission to preempt certain provisions of North Dakota state law.¹ Petitioner explains that it is a Virginia-based company that uses prerecorded messages to conduct political polling, most of which involves interstate calls. According to Petitioner, the North Dakota attorney general’s office has notified ccAdvertising that its use of autodialed, prerecorded message technology is regulated by the state’s telemarketing statutes, and that the state intends to enforce against ccAdvertising section 51-28-02 of the North Dakota Century Code, which prohibits the use of prerecorded messages without authorization from the called party.² Petitioner contends that North Dakota’s law is inconsistent with the Telephone Consumer Protection Act (TCPA) and with the Commission’s telemarketing rules, both of which permit political polling calls using prerecorded messages.³ Therefore, ccAdvertising requests that the Commission preempt North Dakota’s more restrictive regulation of interstate political polling calls.⁴

¹ See Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, filed September 13, 2004. Petitioner requests that the Commission expedite the issuance of the ruling in light of North Dakota’s potential ability to block Petitioner from conducting interstate political polling calls during the weeks leading up the November 2004 elections. See ccAdvertising Petition at 2.

² See generally, *id.* On September 17, 2004, North Dakota’s Office of Attorney General filed a complaint against ccAdvertising in North Dakota district court. See *State of North Dakota ex rel, v. FreeEats.com, Inc.*, No. 04C1694, filed Sept. 17, 2004.

³ See *id.* at 4-6.

⁴ See *id.* at 13.

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).

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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