

Before the
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

In the Matter of)
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Rules and Regulations Implementing the) CH Docket No. 02-278; DA 04-3837
Telephone Consumer Protection Act of 1991)
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The Heritage Company, located at 2402 Wildwood Avenue, Suite 500, Sherwood, Arkansas 72120, hereby submits comments to the Federal Communications Commission (FCC) regarding the Petition for Expedited Declaratory Ruling filed by the National City Mortgage Company (NCMC). We support NCMC's petition of the Commission to preempt Florida Statute Section 501.059 as applied to interstate telephone calls for the reasons described below:

1. The Florida statute in question prohibits prerecorded interstate calls by businesses to residential telephone subscribers. The Commission's rules permit interstate prerecorded calls made to consumers with whom an entity has an established business relationship (EBR), in contrast to the state's blanket ban of the practice. The statute is in clear conflict with the Commission's rules.
2. The Florida statute does not make an exception for prerecorded interstate calls made by entities with whom the consumer has an EBR. This portion of the law is in clear conflict with the Commission's 2003 TCPA Order's safe harbor provision for calls made to consumers with whom an entity has an EBR.
3. The Commission's 2003 TCPA Order stated clearly that when state regulations are more restrictive of interstate telemarketing than the Commission's rules that the state regulations would almost certainly be preempted. This position is supported by the Supremacy Clause of Article VI of the US Constitution as well as numerous precedents regarding the relationship between rules promulgated by federal agencies and state statutes. The Commission clearly has the authority to preempt this Florida statute, and based upon the 2003 TCPA Order, it should do so.
4. Since the Florida Department of Agriculture & Consumer Services clearly intends to enforce the state's statute against NCMC, it has created a situation in which:
 - a. It has created a "multiple, conflicting regulations" situation whose existence the 2003 TCPA Order sought to abolish.

- b. It demonstrates that the State of Florida intends to enforce its statute despite the fact that the statute conflicts with federal regulations, in clear violation of our system of federalism.
 - c. NCMC's request for an expedited ruling is justified based upon the threats of enforcement action it is receiving from the government of the State of Florida.
5. In practical terms for the teleservices industry, a decision in favor of NCMC in which the Commission preempted a state statute that is more restrictive than the federal regulations would be a benefit in two important ways:
- a. It would set a clear precedent for preempting existing statutes and regulations in other states where the regulations are more stringent than those promulgated by the Commission.
 - b. It would deter states from passing and enforcing statutes that are more restrictive than the federal rules in the future.

We appreciate the opportunity to publicly submit comments on these important rules affecting the teleservices industry.

For the company,

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