

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

IN THE MATTER OF:)	
)	
TSA Stores, Inc. (The Sports Authority))	
)	CG Docket No. 02-278
Petition for Declaratory Ruling with)	
Respect to Certain Provisions of the)	
Florida laws and regulations)	

**COMMENTS OF THE TENNESSEE REGULATORY AUTHORITY
IN OPPOSITION TO PETITION FOR DECLARATORY RULING**

The Tennessee Regulatory Authority (“TRA”) files these comments with the Federal Communications Commission (“Commission”) in opposition to the *Petition for Declaratory Ruling* (“*Petition*”) filed by TSA Stores, Inc. (The Sports Authority) (“Petitioner” or “TSA Stores”) on February 1, 2005. The TRA supports the rationale and arguments set forth by the Florida Department of Agriculture and Consumer Services (“Florida”) in the *State of Florida’s Motion to Dismiss for Lack of Jurisdiction and Other Grounds* (“*Florida’s Motion to Dismiss*”) filed on March 28, 2005.

TSA Stores urges the Commission to preempt state do-not-call laws that are inconsistent with the rules applicable under the Telephone Consumer Protection Act, as implemented by the Commission (“Commission Rules”),¹ to the extent the state laws apply to interstate telemarketing. The TRA strongly opposes the petition and the argument that the state law should be preempted.

¹ *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, DA 03-153 (*Report and Order*) 18 F.C.C.R. 14014 (July 3, 2003).

TSA Stores complains about the restrictions of state do-not-call laws and argues that the law subjects TSA Stores to conflicting obligations under state and federal law.² TSA Stores argues that Florida's enforcement actions create a controversy, and uncertainty regarding TSA Stores' obligations. Further, TSA Stores complains that its operations in Florida are being disrupted, which is likely to cause significant loss of revenue.³

The Petitioner's arguments distort the proper focus of the regulations: to protect consumers from unwanted telemarketing calls.⁴ By registering on do-not-call lists, consumers unequivocally express their desire to protect their privacy from telemarketing intrusions. No matter how strict or lenient, the laws do not prevent telemarketers from calling or contacting other consumers who have not registered on the lists.

The Commission Rules and the federal Do-Not-Call registry enhance consumer protection against unwanted telemarketing calls, especially in those states that have not enacted their own do-not-call laws. The federal system, however, does not and should not displace the systems states have implemented to protect and meet the needs of their citizens. Preemption is neither authorized nor appropriate in this arena. The Telephone Consumer Protection Act specifies that states may impose more restrictive intrastate requirements.⁵ If the requirements are preempted in relation to interstate telemarketing, the states will be forced into two-tiered regulation, to the detriment of the state regulatory agencies and local consumers. Regardless of where a call originates, the harm is done within the home and home state of the recipient consumer. As this Commission has recognized, consumers may be confused by inconsistent

² *Petition*, 1 (February 1, 2005).

³ *Id.* at 5.

⁴ This is true of the federal law as well as the state laws. According to the Senate, the purposes of the Telephone Consumer Protection Act were to "protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile (tax) [sic] machines and automatic dialers." S. Rep. No. 102-178, *1 (1991).

⁵ 47 U.S.C.A. §227(e)(1)(2001).

restrictions on interstate and intrastate calls “as [consumers] are unlikely to be able to determine whether the [telemarketing] organization is making an intrastate or interstate call.”⁶ Moreover, the consumer likely will turn to the state regulatory authority to enforce the do-not-call restrictions, whether the call originated from within or without the state.

For these reasons, the TRA respectfully urges the Commission to adopt the reasoning and conclusions expressed in *Florida’s Motion to Dismiss*.

Respectfully submitted,


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⁶ *In re Rules and Regulations Implementing Telephone Consumer Protection Act of 1991*, DA 03-2855 (*Report on Regulatory Coordination*) 18 F.C.C.R. 18558 (Sept. 8, 2003).