**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| TSA Stores, Inc. (The Sports Authority). | ) | |
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| Petition for Declaratory Ruling with Respect to Certain Provisions of the Florida laws and regulations | ) | CG Docket No. 02-278 |
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**COMMENTS OF VERIZON[1] IN SUPPORT OF**
**TSA STORES, INC.'S PETITION FOR DECLARATORY RULING**

The Commission should grant the petition of TSA Stores, Inc. ("TSA Stores") and preempt those portions of Florida's do-not-call laws that are inconsistent with the federal rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). Specifically, it should preempt Florida's law that appears to ban certain *interstate* telemarketing calls that fall within, and are permitted by, the "established business relationship" exception to the federal do-not-call rules. In doing so, the Commission should reaffirm the longstanding principle that any inconsistent state regulation that serves to frustrate federal policies – such as the policies embodied in the federal do-not-call regime here – is preempted.

As the Commission has already recognized, "any state regulation of interstate telemarketing calls that differs from [the federal do-not-call] rules . . . almost certainly would be preempted."[2] The Commission's admonition is consistent with long-standing principles of

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[1] These reply comments are being filed on behalf of the Verizon Telephone Companies, which are listed in Attachment A; Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance; NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions; Verizon Select Services Inc.; and Verizon Online-New Jersey LLC, Verizon Internet Services Inc. and GTE.Net LLC d/b/a Verizon Internet Solutions (which operate under the trade name Verizon Online).

[2] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, ¶ 84 (2003) ("*2003 TCPA Order*"). By contrast, the

conflict preemption. As the Supreme Court has made clear, state laws are preempted if they conflict with a federal agency's regulatory scheme. *See, e.g.*, *Geier v. American Honda Motor Co.*, 529 U.S. 861, 871-86 (2000).[3] Preemption does not require that it be impossible simultaneously to comply with the federal and state regulations. Rather, preemption applies whenever the state law would upset the deliberate policy choices made by the agency in crafting its regulations. *See id.* at 873.

There can be no doubt that Florida's do-not-call law, which claims to regulate *interstate* calls,[4] is inconsistent with the Commission's rules implementing the TCPA. TSA Stores' petition focuses on that portion of Florida's law that attempts to prohibit all interstate telemarketing calls using prerecorded messages.[5] To be sure, the Commission's rules generally prohibit telemarketing calls using prerecorded messages, unless the caller has obtained the called party's prior consent. *See* 47 C.F.R. § 64.1200(a)(2). The Commission, however, has crafted exceptions that expressly permit prerecorded messages in certain circumstances, such as when the calling and called parties have an established business relationship. *See* 47 C.F.R. §

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Commission specifically held that states could adopt different do-not-call rules for *intrastate* calls. *Id.* at ¶ 82.

[3] *See also* Verizon Reply Comments in Support of Petitions of National City Mortgage Co. and Consumer Bankers Association, CG Docket 02-278, at 5-8 (filed Feb. 17, 2005) (discussing *Geier*).

[4] *See* Fla. Stat. § 501.059(1)(h) (2004) (statute purports to encompass calls "from other states or nations to consumers located in Florida").

[5] TSA Stores' petition is the most recent in a string of petitions asking the Commission to preempt various inconsistent state do-not-call laws that claim to regulate interstate calls, including one prior petition addressing Florida's law. Verizon's comments and reply comments supporting those petitions are equally applicable here. *See* Verizon Comments in Support of Petition for Declaratory Ruling by American Teleservices Association, Inc. ("ATA"), CG Docket No. 02-278 (filed Nov. 17, 2004) (addressing New Jersey law); Reply Comments of Verizon in Support of ATA's Petition, CG Docket No. 02-278 (filed Dec. 2, 2004); Verizon Comments in Support of Petitions of National City Mortgage Co. ("NCMC") and Consumer Bankers Association ("CBA"), CG Docket 02-278, at 5-8 (filed Feb. 2, 2005) (addressing Florida, Indiana, and Wisconsin laws); Reply Comments of Verizon in Support of Petitions of NCMC and CBA, CG Docket 02-278, at 5-8 (filed Feb. 17, 2005).

64.1200(a)(2)(iv).[6] By contrast, Florida's law bans prerecorded messages in telemarketing calls entirely; Florida's law does not contain an "established business relationship" exception to its prohibition on prerecorded messages. *See* Fla. Stat. § 501.059(7)(a).

Florida's refusal to give effect to the Commission's "established business relationship" exception frustrates federal objectives in at least two ways. First, Florida's law conflicts with the Commission's specific determination that interstate callers should be permitted to make prerecorded message calls to persons with whom they have an established business relationship. In crafting the federal do-not-call rules in 1992, the Commission balanced the needs of businesses to communicate with current and recent customers against consumers' privacy concerns, and concluded that "requiring actual consent to prerecorded message calls where such [established business] relationships exist could significantly impede communications between businesses and their customers."[7] In 2003, the Commission revisited this issue, and again decided to allow interstate callers to use prerecorded messages when calling persons with whom they have an established business relationship.[8] Florida's do-not-call law, which attempts to prohibit the same interstate calls that are expressly permitted under the federal do-not-call rules, necessarily undermines the policy balance struck by the Commission and must be preempted.

Second, Florida's law conflicts with one of the core principles underlying the entire federal do-not-call regime: the need for a uniform national standard for interstate calls. The

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[6] The Commission's rules also permit prerecorded messages without prior consent if the call (1) is made for emergency purposes; (2) is not made for a commercial purpose; (3) is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or (4) is made by or on behalf of a tax-exempt nonprofit organization. *See* 47 C.F.R. 64.1200(a)(i)-(v).

[7] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752, ¶ 34 (1992).

[8] *See 2003 TCPA Order* at ¶¶ 112, 142 (reaffirming decision to allow companies to make prerecorded message calls to those with whom they have established business relationships).

Commission already has found that "it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations." *2003 TCPA Order* at ¶ 83. Differing state laws that create a patchwork of inconsistent rules across the country necessarily thwart Congress' intent of creating a uniform national standard to govern interstate telemarketing calls. Indeed, the Commission has already recognized that inconsistent state rules governing *interstate* calls "frustrate the federal objective of creating uniform national rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion" and are "almost certainly . . . preempted." *Id.* at ¶¶ 83, 84. The Florida law at issue here disrupts the Commission's uniform regulatory scheme for interstate calls and must be preempted.

## CONCLUSION

For the foregoing reasons, TSA Stores' petition should be granted. The Commission also should reaffirm that any state law that attempts to regulate interstate calls in a manner that conflicts with federal law is preempted.

Respectfully submitted,

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**ATTACHMENT A**

## THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.