

“prohibits unsolicited insurance advertising by facsimile while the Texas [laws] permit [such] advertising * * * so long as the advertisements are truthful and not misleading,” the TCPA conflicts with the Texas law and is preempted under McCarran-Ferguson. See 47 U.S.C. 227(b)(1)(C) and (a)(4).

30. To the extent that any state law regulates the “business of insurance” and the TCPA is found to “invalidate, impair, or supersede” such state law, it is possible that a particular activity involving the business of insurance would not fall within the reach of the TCPA. Any determination about the applicability of McCarran-Ferguson, however, requires an analysis of the particular activity and State law regulating it. In addition, McCarran-Ferguson applies only to federal statutes that “invalidate, impair, or supersede” state insurance regulation. Courts have held that duplication of state law prohibitions by a federal statute do not “invalidate, impair, or supersede” state laws regulating the business of insurance. Nor is the mere presence of a regulatory scheme enough to show that a state statute is “invalidated, impaired or superseded.”

31. We believe that the TCPA, which was enacted to protect consumer privacy interests, is compatible with states’ regulatory interests. In fact, the TCPA permits States to enforce the provisions of the TCPA on behalf of residents of their State. 47 U.S.C. 227(f)(1). In addition, we believe that uniform application of the national do-not-call registry to all entities that use the telephone to advertise best serves the goals of the TCPA. To exempt the insurance industry from liability under the TCPA would likely confuse consumers and interfere with the protections provided by Congress through the TCPA. Therefore, to the extent that the operation of McCarran-Ferguson on the TCPA is unclear, we will raise this issue in our Report to Congress as required by the Do-Not-Call Act.

32. We conclude that the national do-not-call mechanism established by the FTC and this Commission adequately takes into consideration the needs of small businesses and entities that telemarket on a local or regional basis in gaining access to the national database. As required by 47 U.S.C. 227(c)(1)(C), we have considered whether different procedures should apply for local solicitations and small businesses. We decline, however, to exempt such entities from the national do-not-call requirements. Given the large number of entities that solicit by telephone, and the technological tools that allow even

small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy and create consumer confusion and frustration. In so doing, we conclude that the approach adopted herein satisfies section 227(c)(4)’s requirement that the Commission, in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level and develop a fee schedule for recouping the cost of such database that recognizes such differences. The national database will be available for purchase by sellers on an area-code-by-area-code basis. The cost to access the database will vary depending on the number of area codes requested. Sellers need only purchase those area codes in which the seller intends to telemarket. In fact, sellers that request access to five or fewer area codes will be granted access to those area codes at no cost. We note that thirty-three states currently have five or fewer area codes. Thus, telemarketers or sellers operating on a “local” or “regional” basis within one of these thirty-three states will have access to all of that state’s national do-not-call registrants at no cost. In addition, the national database will provide a single number lookup feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the national registry. We believe this fee structure adequately reflects the needs of regional telemarketers, small business and those marketing on a *de minimis* level. For these reasons, we conclude that this approach will not place any unreasonable costs on small businesses. 47 U.S.C. 227(c)(4)(B)(iii).

Section 227(c)(3) Requirements

33. We conclude that the national do-not-call database adopted jointly by this Commission and the FTC satisfies each of the statutory requirements outlined in 47 U.S.C. 227(c)(3)(A) through (c)(3)(L). We now discuss each such requirement. Section 227(c)(3)(A) requires the Commission to specify the method by which an entity to administer the national database will be selected. On August 2, 2002, the FTC issued a Request for Quotes (RFQ) to selected vendors on GSA schedules seeking proposals to develop, implement, and operate the national registry. After evaluating those proposals, the FTC selected a competitive range of vendors and issued an amended RFQ to those vendors on November 25, 2002. After

further evaluation, the FTC selected AT&T Government Solutions as the successful vendor for the national do-not-call database on March 1, 2003. Congress has approved the necessary funding for implementation of the national database.

34. Pursuant to sections 227(c)(3)(B) through (c)(3)(C), we require each common carrier providing telephone exchange service to inform subscribers for telephone exchange service of the opportunity to provide notification that such subscriber objects to receiving telephone solicitations. Each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber’s right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national database and (ii) the methods by which such rights may be exercised by the subscriber. Pursuant to section 227(c)(3)(C), we conclude that, beginning on January 1, 2004, such common carriers shall provide an annual notice, via an insert in the customer’s bill, to inform their subscribers of the opportunity to register or revoke registrations on the national do-not-call database. Although we do not specify the exact description or form that such notification should take, such notification must be clear and conspicuous. At a minimum, it must include the toll-free telephone number and Internet address established by the FTC to register or revoke registrations on the national do-not-call database.

35. Section 227(c)(3)(D) requires the Commission to specify the methods by which registrations shall be collected and added to the database. Consumers will be able to add their telephone numbers to the national do-not-call registry either through a toll-free telephone call or over the Internet. Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response (IVR) system. The consumers will be asked to enter on their telephone keypad the telephone number from which the consumer is calling. This number will be checked against the ANI that is transmitted with the call. If the number entered matches the ANI, then the consumer will be informed that the number has been registered. Consumers who choose to register over the Internet will go to a Web site dedicated to the registration process where they will be asked to enter the telephone number they wish to register. We encourage the FTC to notify consumers in the IVR message that the national registry will