



PUBLIC NOTICE

Federal Communications Commission
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DA 12-511
Released: March 30, 2012

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION
FOR EXPEDITED DECLARATORY RULING FROM SOUNDBITE COMMUNICATIONS,
INC.**

CG Docket No. 02-278

Comment Date: April 30, 2012

Reply Comment Date: May 15, 2012

On February 16, 2012, SoundBite Communications, Inc. (SoundBite) filed a petition¹ seeking a declaratory ruling that sending a one-time text message confirming a consumer's request that no further text messages be sent in the future is not a violation of the Telephone Consumer Protection Act (TCPA)² or Section 64.1200 of the Commission's rules.³ With this Public Notice, we seek comment on the petition, as described below.

The TCPA and the Commission's implementing rules prohibit any person from making a non-emergency call using an automatic telephone dialing system or an artificial or prerecorded voice to, among other locations, any telephone number assigned to a cellular telephone service, without the recipient's prior express consent.⁴ The Commission has concluded that this prohibition encompasses both voice and text calls, including short message service (SMS) calls, if the call is made to a telephone number assigned to such service.⁵

¹ See *SoundBite Communications, Inc.*, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Feb. 16, 2012) (*Petition*) (noting that several companies including SoundBite are the subject of multi-million dollar class action lawsuits based on one-time confirmation messages sent to consumers who have opted out of receiving future text messages).

² Codified as 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

⁴ 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii). The Commission recently adopted the requirement that such consent must be written if the call to a number assigned to a cellular telephone service is for telemarketing purposes. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 12-21 (rel. Feb. 15, 2012).

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

SoundBite sends text messages on behalf of a number of companies.⁶ SoundBite asserts that wireless operators, aggregators, and CTIA – The Wireless Association require SoundBite to follow the Mobile Marketing Association (MMA) best practices before they will enable and allow text messaging campaigns on wireless networks.⁷ These best practices include sending a text message confirming receipt of a request to opt-out from future text messages.⁸ As a result, SoundBite indicates that when a consumer sends a text message choosing to opt-out from receiving future text messages from a client company, a one-time reply is sent back via text message to that customer confirming the opt-out request.⁹

SoundBite states that one-time confirmation text messages are sent within minutes of receipt of the opt-out request and are sent only to those consumers making an opt-out request.¹⁰ SoundBite argues that these text messages do not violate the TCPA or Commission rules.¹¹ Specifically, SoundBite argues that such messages are permissible because they are sent within a grace period established by the Commission for subject entities to effectuate opt-out requests.¹² In addition, SoundBite argues that it does not use an automatic telephone dialing system, as defined by the TCPA, to send such text messages because the software used to send the confirmation text does not have the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial such numbers.¹³

SoundBite further asserts that opt-out confirmations are consistent with good consumer policy and promote the public interest.¹⁴ SoundBite notes that the MMA, in conjunction with all major mobile operators in the United States, emphasizes that opt-out confirmations are consumer friendly practices.¹⁵ Moreover, SoundBite argues that the TCPA was enacted to protect the public from unwanted privacy intrusions and disruptions to essential public safety services caused by random or sequential number generators and that none of these concerns are implicated by prompt and isolated confirmation text messages.¹⁶

We seek comment on the above issues, including whether these messages, as described by SoundBite in the Petition, violate the TCPA and the Commission's rules.

⁶ *Petition* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *See id.* at 4-5 (“[t]he Commission allows telemarketers up to 30 days after an opt-out request is made to remove the phone numbers from their systems. The FCC has stated that text messages are ‘calls’ under the TCPA”).

¹³ *Id.* at 6 (“[t]he SoundBite system has absolutely no capacity to store, look-up, or dial in any random or sequential order – there is only a precise, one-time response to an individual subscriber’s opt-out text message request that goes only to the specific device through which the opt-out request was made”).

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 7-8.

¹⁶ *Id.* at 8-9.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial 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, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed

¹⁷ 47 C.F.R. §§ 1.1200 *et seq.*

consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797.

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