



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 13-1433
Released: June 25, 2013

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

CG Docket No. 02-278

Comment Date: July 25, 2013

Reply Comment Date: August 9, 2013

With this Public Notice, the Consumer and Governmental Affairs Bureau seeks comment on a Petition for Declaratory ruling filed by YouMail, Inc. (YouMail)¹ seeking clarification of three issues arising under the Telephone Consumer Protection Act (TCPA)² and Section 64.1200 of the Commission's rules.³

YouMail states that it provides a software-based service that allows smartphone users to replace default voicemail options with customizable telephone answering functions, including automated text message replies to calls.⁴ YouMail first asks the Commission to clarify that its "virtual receptionist" software is not an "automatic telephone dialing system" (ATDS) as defined by 47 U.S.C. § 227(a)(1)⁵ because the software does not have the current capacity to store, produce, or dial random or sequential telephone numbers but, instead, responds one time to a single input (a caller leaving a voicemail message) and only when instructed to do so by a user's settings and when adequate caller ID information is available. Second, YouMail asks the Commission to clarify that YouMail does not initiate calls because it does not cause the call to occur as defined by the TCPA.⁶ Third, YouMail asks the Commission to confirm that callers provide prior consent to receive a responsive text when leaving voicemail messages for a

¹ See *YouMail, Inc.*, Petition for Expedited Declaratory Ruling and Clarification, CG Docket No. 02-278 (filed Apr. 19, 2013) (*Petition*) (noting that several companies including YouMail are the subject of class action lawsuits based on the TCPA's definition of autodialer and classifications of group text-based services).

² Codified as 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

⁴ *Petition* at 2-3.

⁵ *Id.* at 9-10.

⁶ *Id.* at 12.

YouMail subscriber.⁷ YouMail states that these clarifications are needed to address the status of these technologies and services under the statute and implementing regulations.⁸

Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁹ 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.¹⁰ Persons making *ex parte* presentations

⁷ *Id.* at 13-14.

⁸ *Id.* at 1-2. YouMail notes that it and several other companies are the subjects of class action lawsuits based on the TCPA's definition of autodialer and classifications of group text-based services. *Id.* at 8, 15.

⁹ 47 C.F.R. §§ 1.415, 1.419.

¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*

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 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: B. Lynn Follansbee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-1514, and lynn.follansbee@fcc.gov.

-FCC-