



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR EXPEDITED DECLARATORY RULING AND/OR EXPEDITED RULEMAKING FROM THE PROFESSIONAL ASSOCIATION FOR CUSTOMER ENGAGEMENT

CG Docket No. 02-278

Comment Date: December 19, 2013

Reply Comment Date: January 4, 2014

With this Public Notice, and consistent with sections 1.2(b) and 1.403 of the Commission's rules, we seek comment on the Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking filed by the Professional Association for Customer Engagement (PACE).¹ PACE seeks clarification through an Expedited Declaratory Ruling that a dialing system is not an automatic telephone dialing system for purposes of the Telephone Consumer Protection Act (TCPA)² unless it has the capacity to dial numbers without human intervention, regardless of whether a call is initiated by entering ten digits of a telephone number or by a one-click dialing method.³ PACE also seeks clarification that, for TCPA purposes, a dialing system's "capacity" is limited to what it is capable of doing, without further modification, at the time the call is placed.⁴ PACE asserts that the Commission could provide the requested clarification in a Declaratory Ruling because no rule changes would be necessary.⁵

In the alternative, PACE requests an Expedited Rulemaking should the Commission disagree that Declaratory Ruling is appropriate.⁶ PACE requests that, in an Expedited Rulemaking, the Commission define the term "capacity" as used in the TCPA and the Commission's rules as "the current ability to

¹ See *Professional Association for Customer Engagement*, Petition for Expedited Declaratory Ruling and/or Expedited Rulemaking, CG Docket No. 02-278 (filed Oct. 18, 2013) (*Petition*). PACE is a "non-profit trade organization dedicated exclusively to the advancement of companies that utilize contact centers as an integral channel of operations." *Petition* at 4. The Petition is styled differently on the cover page than it is within the Petition itself. The body of the Petition, however, is clear that PACE requests an expedited a rulemaking "[i]n the alternative" to a declaratory ruling, rather than "and/or" a declaratory ruling. Compare *Petition* at 1 with 3.

² Codified as 47 U.S.C. § 227.

³ *Petition* at 4.

⁴ *Id.*

⁵ *Id.* at 12.

⁶ *Id.* See also 47 C.F.R. § 1.2(a).

operate or perform an action, when placing a call, without first being modified or technologically altered.”⁷ PACE further asks that the Expedited Rulemaking modify the definition of “automatic telephone dialing system” in section 64.1200(f)(2) of the Commission’s rules by adding, to the end of the definition, “without human intervention.”⁸

We seek comment on PACE’s *Petition*, including whether declaratory ruling or rulemaking is the appropriate type of proceeding in which to consider the merits of its arguments.

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 and 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 must file a

⁷ *Petition* at 12-13.

⁸ *Petition* at 13; 47 C.F.R. § 64.1200(f)(2).

⁹ 47 C.F.R. §§ 1.415, 1.419.

¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*

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: Kristi Lemoine, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-2467, and kristi.lemoine@fcc.gov.

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