



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR EXPEDITED DECLARATORY RULING FILED BY GLIDE TALK, LTD.

CG Docket No. 02-278

Comment Date: January 3, 2014

Reply Comment Date: January 21, 2014

On October 28, 2013, Glide Talk, Ltd. (Glide Talk) filed a petition for expedited declaratory ruling requesting that the Commission clarify certain aspects of the Telephone Consumer Protection Act (TCPA).¹ Glide Talk states that it provides a video messaging service application (Glide App) that can be used on certain mobile devices to enable communications through video messaging.² Glide Talk claims that, although its service does not rely on text messaging for its primary functionality, it offers its users the ability to invite other parties to install Glide App using Short Messaging Service (SMS) text messages.³ Glide Talk indicates that the user controls these invitations and chooses the recipients of these text messages from their own contact list.⁴ Glide Talk states that, as a result, Glide App merely provides a mechanism through which the user may send a text message invitation.⁵

Glide Talk states that Glide App does not have the capacity to generate random or sequential numbers and should not be deemed an “automatic telephone dialing system” (autodialer) under the TCPA’s definition.⁶ Glide Talk asks the Commission to clarify that the TCPA’s restrictions on the use of autodialers to call wireless numbers applies only to equipment that could, at the time of the call, be used to store or generate sequential or randomized telephone numbers.⁷ Glide Talk additionally argues that, even if the equipment used by the Glide App to generate text messages is characterized as autodialing

¹ See *Petition of Glide Talk, Ltd. for Expedited Declaratory Ruling*, CG Docket No. 02-278, filed by Glide Talk, Ltd. on Oct. 28, 2013 (Petition).

² *Id.* at 2-3.

³ *Id.* at 3 (noting that “usability for any individual depends on whether the individual’s friends and family members also are users of the Glide App”).

⁴ *Id.*

⁵ *Id.* at 3-4.

⁶ *Id.* at 13.

⁷ See *id.* at 9-13.

equipment, text messages sent by the application's user are not initiated by Glide Talk and it should not be deemed the responsible party for violations of the TCPA.⁸ In addition, Glide Talk contends that the Commission should confirm that the provision of a contact's phone number by a consumer constitutes prior consent to be sent a text message from the Glide App user.⁹ Alternatively, Glide Talk suggests that, if the Commission declines to issue a declaratory ruling, the Commission should grant a retroactive waiver or exempt the Glide App text messages from the TCPA's rules.¹⁰ We seek comment on the issues raised in the Petition.

By way of background, and in relevant part, the TCPA prohibits making "any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice" to any telephone number assigned to a cellular telephone service.¹¹ The TCPA defines an autodialer as "equipment which has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."¹² In 2003, the Commission confirmed that the TCPA's prohibition on autodialers encompasses both voice and text messaging calls, including SMS calls.¹³

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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.

⁸ *Id.* at 14.

⁹ *Id.* at 16.

¹⁰ *Id.* at 5, n.9 (contending that "[t]he Glide App's user-initiated invitation messages do not adversely affect the privacy rights of recipients because they are caused to be sent by a user to recipients with whom the user has a prior social, familial, or professional relationship").

¹¹ See 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1).

¹² See 47 U.S.C. § 227(a)(1); see also 47 C.F.R. § 64.1200(f)(2).

¹³ 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).

- 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.
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The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴ 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 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 or Richard.Smith@fcc.gov.

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¹⁴ 47 C.F.R. §§ 1.1200 *et seq.*