



PUBLIC NOTICE

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

CG Docket No. 02-278

Comment Date: October 3, 2014
Reply Comment Date: October 20, 2014

On July 31, 2014, VoApps, Inc. (VoApps) filed a petition for declaratory ruling requesting that the Commission clarify the applicability of the Telephone Consumer Protection Act (TCPA)¹ to its voicemail delivery system.² Specifically, VoApps asks the Commission to conclude that delivery of a voice message directly to a voicemail box through the use of VoApps' DirectDROP Voicemail technology does not constitute a call that is subject to the prohibitions on the use of an automatic telephone dialing system (ATDS) or an artificial or prerecorded voice as set forth in the TCPA.³ Alternatively, if the Commission determines that its delivery of a voicemail message to be a call subject to the TCPA, VoApps asks the Commission to exempt VoApps' voicemail messages because delivery of its messages does not involve a service for which the called party is charged for the call.⁴

In pertinent part, the TCPA and Commission rules prohibit autodialed or prerecorded non-emergency calls to a wireless telephone number or other service for which the called party is charged for the call, except with the prior express consent of the called party.⁵ The Commission may exempt calls to a wireless telephone number that are not charged to the called party, subject to conditions to protect consumer privacy.⁶

¹ The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 C.F.R. § 64.1200.

² *Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, filed by VoApps, Inc. on July 31, 2014 (*Petition*).

³ *Petition* at 1.

⁴ *Id.* at 5.

⁵ 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii). VoApps limits its requests to delivery of voicemail messages concerning debt collection and other non-telemarketing messages. *Petition* at 21.

⁶ 47 U.S.C. § 227(b)(2)(C).

VoApps argues that it does not make calls to any wireless telephone numbers or to other services for which the called party is charged for the call. Instead, it asserts, it makes calls to a business wireline telephone number assigned to the voicemail service provider's platform, and consumers make separate calls to the voicemail system to retrieve the messages.⁷ With respect to its alternate request, VoApps asserts that consumers are not charged for the calls to the voicemail platform to deliver the voicemail messages⁸ and that the consumer can retrieve the message without incurring a charge.⁹ VoApps further states that it is the consumer who determines whether, when, and how to retrieve a voicemail message, thereby protecting consumer privacy and avoiding the disruption of consumers' lives that lay the foundation of the TCPA.¹⁰ We seek comment on these and any other issues raised in the *Petition*.

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 Street, 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.¹¹ Persons making *ex parte* presentations must file a

⁷ *Petition* at 1-2, 14-19.

⁸ *Id.* at 17.

⁹ *Id.* at 17-19.

¹⁰ *Id.* at 20-21.

¹¹ 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: Karen F. Johnson, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7706; karen.johnson@fcc.gov.

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