



PUBLIC NOTICE

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

CG Docket No. 02-278

Comment Date: March 24, 2014

Reply Comment Date: April 8, 2014

With this Public Notice, we seek comment on a Petition for Declaratory Ruling filed by Acurian, Inc.¹ (Acurian) asking the Commission to clarify that a telephone call to a residential telephone line seeking an individual's participation in a clinical pharmaceutical trial is exempt from the restrictions on prerecorded calls enacted as part of the Telephone Consumer Protection Act of 1991 ("TCPA").² The TCPA and the Commission's rules require prior express written consent to place prerecorded calls to residential lines unless otherwise exempt.³ As authorized by the TCPA, the Commission's rules exempt from this restriction non-commercial calls and commercial calls that do not include or introduce an advertisement or constitute telemarketing, among others.⁴

Acurian states that its prerecorded calls to residential lines are not made for a commercial purpose.⁵ Acurian notes that the purpose of its calls is to match qualified candidates who have expressed interest in participating in clinical pharmaceutical trials with doctors performing those trials and to comply with Food and Drug Administration regulations.⁶ Alternatively, Acurian asserts that if its calls are found to be commercial, these calls do not introduce or include an advertisement or constitute telemarketing.⁷ In addition, Acurian indicates that its calls serve the public interest in that they help to match potential candidates with clinical trials, thereby reducing drug and health care costs and

¹ See *Acurian, Inc.*, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Feb. 5, 2014) (*Petition*).

² See 47 U.S.C. § 227. The statutory exemptions are codified at 47 U.S.C. § 227(b)(2)(B).

³ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(3).

⁴ 47 C.F.R. § 64.1200(a)(3)(i)-(iv) (also exempting emergency calls and calls made by or on behalf of a tax-exempt nonprofit organization).

⁵ *Petition* at 2, 9.

⁶ *Id.* at 3-4, 10. Acurian states that its telephone communications do not entail commercial solicitation or marketing of any kind; the sole purpose of these calls is to contact the individual and refer him or her to a local doctor who is participating in a clinical trial in which they are interested. *Id.* at 3-4.

⁷ *Id.* at 5.

contributing to the availability of new drugs.⁸ Finally, Acurian states that its requested clarification would ensure that the regulation of prerecorded calls is constitutional because, it maintains, such a restriction of Acurian's calls would not survive review under the First Amendment.⁹

Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁰ 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.¹¹ 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

⁸ *Id.* at 13.

⁹ *Id.* at 14-16.

¹⁰ 47 C.F.R. §§ 1.415, 1.419.

¹¹ 47 C.F.R. §§ 1.1200 *et seq.*

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 Johnson, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-7706, and karen.johnson@fcc.gov.

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