



PUBLIC NOTICE

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

CG Docket No. 02-278

Comment Date: May 7, 2014
Reply Comment Date: May 22, 2014

On March 18, 2014, TextMe, Inc. (TextMe) filed a petition for declaratory ruling and clarification requesting that the Commission clarify certain aspects of the Telephone Consumer Protection Act (TCPA).¹ First, TextMe asks the Commission to clarify the meaning of the term “capacity” as used in the TCPA’s definition of “automatic telephone dialing system.”² Second, TextMe asks the Commission to clarify that users of TextMe’s service, instead of TextMe itself, make or send calls or text messages for purposes of the TCPA.³ In the alternative, TextMe requests that the Commission clarify that third party consent obtained through an intermediary satisfies the TCPA’s “prior express consent” requirement for calls and texts to wireless numbers.⁴ We seek comment on the issues raised in the *Petition*.

TextMe states that it provides a free mobile telephone application (“TextMe App”) that, through TextMe’s social communications service, enables users to send and receive non-commercial texts messages to or from personal contacts in the United States, and allows the receipt of free texts and voice calls by TextMe users.⁵ According to TextMe, the app also allows users to make voice calls, but users are not required to purchase an outbound calling functionality.⁶ TextMe states that a currently-disabled function allows users to invite friends to use the TextMe App by sharing a message about TextMe via third-party social networks, by email, or by text message.⁷

¹ *TextMe, Inc.’s Petition for Expedited Declaratory Ruling and Clarification*, CG Docket No. 02-278, filed by TextMe, Inc. on Mar. 18, 2014 (*Petition*). The TCPA is codified as 47 U.S.C. § 227.

² *Petition* at 3 (citing 47 U.S.C. § 227(a)(1)).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 4-6.

⁶ *Id.*

⁷ *Id.* at 5

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.
- 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.⁸ 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,

⁸ 47 C.F.R. §§ 1.1200 *et seq.*

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; lynn.follansbee@fcc.gov.

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