



PUBLIC NOTICE

Federal Communications Commission
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DA 14-75

Released: January 22, 2014

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING FILED BY RETAIL INDUSTRY LEADERS ASSOCIATION

CG Docket No. 02-278

Comment Date: February 21, 2014

Reply Comment Date: March 10, 2014

With this Public Notice, we seek comment on a Petition for Declaratory Ruling filed by the Retail Industry Leaders Association (RILA) requesting that the Commission clarify certain aspects of the Telephone Consumer Protection Act (TCPA), and in particular the prior written consent rules that became effective October 16, 2013.¹ RILA states that it is a trade association of the world's largest retail companies whose members include retailers, product manufacturers, and service suppliers that utilize "on-demand text services" to facilitate consumer purchases.² RILA describes on-demand text service as providing one-time replies to consumer requests for offers via text message. For example, a consumer might respond to a retailer's "call-to-action" display by texting "discount" to the retailer which replies by texting a coupon to the consumer.³ RILA notes that the reply text sent to the consumer does not include marketing material unrelated to the information specifically requested by the consumer and no additional offers are sent in response to the consumer-initiated text request.⁴

RILA states that TCPA does not apply to on-demand text service because these communications are: (1) initiated by the consumer, not a telemarketer; (2) isolated, one-time messages sent immediately in response to a consumer's specific request; and (3) contain only the specific information requested by the consumer.⁵ RILA asks the Commission to clarify that the rule requiring prior written consent to receive text messages⁶ does not apply to on-demand texts because those texts provide information specifically

¹ See *Petition of Retail Industry Leaders Association for Declaratory Ruling*, CG Docket No. 02-278, filed by Retail Industry Leaders Association on Dec. 30, 2013 (Petition).

² *Id.* at 2-3.

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.* at 1-2.

⁶ 47 C.F.R. § 64.1200

requested by the consumer and do not contain any undesired marketing material.⁷ RILA argues that application of the prior written consent rule in this limited set of circumstances would not comport with the TCPA and the Commission's related rules, and would be inconsistent with the Congressional intent not to impede "desired or expected" communications between consumers and businesses.⁸ We seek comment on the 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 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.⁹ 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

⁷ See Petition at 8.

⁸ *Id.* at 2, 11.

⁹ 47 C.F.R. §§ 1.1200 *et seq.*

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: B. Lynn Follansbee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1514, and lynn.follansbee@fcc.gov.

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