



# PUBLIC NOTICE

Federal Communications Commission  
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## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR DECLARATORY RULING FILED BY BROADNET TELESERVICES, LLC

CG Docket No. 02-278

**Comment Date: October 29, 2015**

**Reply Comment Date: November 13, 2015**

With this Public Notice, we seek comment on a petition for declaratory ruling filed by Broadnet Teleservices, LLC (Broadnet), requesting that the Commission declare that the Telephone Consumer Protection Act (TCPA) and the Commission's implementing rules<sup>1</sup> do not apply to calls made by or on behalf of federal, state, and local governments when such calls are made for official purposes.<sup>2</sup> In its petition, Broadnet further requests that the Commission include legislative, judicial, and executive bodies, and those who act on behalf of such government entities, in declaring the TCPA and the associated rules do not apply to calls made by or on behalf of federal, state, and local governments.<sup>3</sup>

Specifically, Broadnet states that, in the absence of such action, consumers who “rely on their wireless phones as their primary, or only, means of telephone communication will be deprived of important opportunities to engage with their government as wired citizens currently enjoy” and that these individuals deserve the same access to democracy and the same engagement with policymakers that is currently only possible for individuals with access to landline phones.<sup>4</sup> In further support, Broadnet contends that the plain language of the TCPA demonstrates that the TCPA does not apply to calls made by government entities because the Communications Act, in which the TCPA is codified, defines a “person” as an “individual, partnership, association, joint-stock company, trust or corporation” and

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

<sup>2</sup> Petition of Broadnet Teleservices LLC for Declaratory Ruling, CG Docket No. 02-278, at 1-2 (filed on Sept. 16, 2015) (*Petition*). Broadnet states that government entities and officials using its TeleForum<sup>TM</sup> technology platform can invite citizens – from several hundred to hundreds of thousands – to participate in a shared real-time exercise in democracy in which citizens are able to engage in live conversation, hearing directly from their government about issues important to the local community and providing real-time feedback. *Id.* at 2.

<sup>3</sup> *Id.* at 8-10.

<sup>4</sup> *Id.* at 1-4.

governmental entities fall outside of that definition.<sup>5</sup> Additionally, Broadnet maintains that the language of the TCPA, as supported by Supreme Court precedent,<sup>6</sup> demonstrates that calls made by or on behalf of government entities, including legislative, judicial, and executive bodies, and those working on behalf of government entities and officials, are not subject to the TCPA.<sup>7</sup> It argues that the term “person” is best construed to exclude the government and government officials at the federal, state, and local levels when calls are made for official purposes.<sup>8</sup>

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 12<sup>th</sup> 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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<sup>5</sup> *Id.* at 2, 5-7; *see also* 47 U.S.C § 153(39).

<sup>6</sup> Broadnet states that the Supreme Court has stated that “in common usage, the term ‘person’ does not include the sovereign, [and] statutes employing the [term] are ordinarily construed to exclude it.” *Petition* at 6. It also points out that the Supreme Court has specifically held that a state and state officials acting in their official capacities were not “persons” under 42 U.S.C. § 1983, and that other courts have extended this reasoning to the federal government and other governmental entities. *Id.*

<sup>7</sup> *Id.* at 5-7.

<sup>8</sup> *Id.* at 2, 5-9.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> 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:** Christina Clearwater, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1893; [Christina.Clearwater@fcc.gov](mailto:Christina.Clearwater@fcc.gov).

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<sup>9</sup> 47 C.F.R. §§ 1.1200 *et seq.*