



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITIONS CONCERNING THE COMMISSION'S RULE ON OPT-OUT NOTICES ON FAX ADVERTISEMENTS

CG Docket No. 02-278
CG Docket No. 05-338

Comment Date: May 22, 2015
Reply Comment Date: May 29, 2015

Sixty-one petitions have been filed seeking a waiver of section 64.1200(a)(4)(iv) of the Commission's rules, which requires that an opt-out notice containing certain information¹ be included in fax ads sent to a consumer who has provided prior express invitation or permission.² With this Public Notice, we seek comment on the Petitions as described below.

¹ The rules specify that the opt-out notice contained in fax ads must: (1) be clear and conspicuous and on the first page of the ad; (2) state that the recipient may make a request to the sender not to send any future ads and that failure to comply, within 30 days, with a request is unlawful; and (3) contain a domestic contact telephone number and fax number for the recipient to transmit an opt-out request. If neither the required telephone number nor fax number is a toll-free number, a separate cost-free mechanism, including a Web site address or email address, must be provided for a recipient to transmit a request to opt-out of future faxes. See 47 C.F.R. § 64.1200(a)(4)(iii)-(iv).

² See *Petition of Consumer Energy Solutions, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Mar. 26, 2015) (Consumer Energy Petition); *Petition of Practice Recruiters, LLC f/k/a Practice Recruiters Incorporated, et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Mar. 27, 2015) (Practice Recruiters Petition); *Petition of Industrial Packaging Supplies, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 3, 2015) (IPS Petition); *Petition of American Health Service Sales Corporation for Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 6, 2015) (American Health Petition); *Petition of Virtuox, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 6, 2015) (Virtuox Petition); *Petition of Financial Carrier Services, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 7, 2015) (FCS Petition); *Petition of Nomax, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 13, 2015) (Nomax Petition); *Petition of Heska Corporation for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr. 14, 2015) (Heska Petition); *Petition of Odyssey Services, Inc. for Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 14, 2015) (Odyssey Petition); *Petition of GE Healthcare, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 15, 2015) (GE Healthcare Petition); *Petition of American Power & Gas, LLC, et al. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr.

17, 2015) (AP&G Petition); *Petition of Competitive Health, Inc. and First Access, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 17, 2015) (Competitive Health Petition); *Petition of Jay Geier's Schedule Institute for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 20, 2015) (Geier Petition); *Petition of Kaberline Healthcare Informatics, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 22, 2015) (Kaberline Petition); *Petition of Logistic Innovations, LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 24, 2015) (Logistic Petition); *Petition of CCI Investments, LLC, d/b/a CareWorks Consultants, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 27, 2015) (CCI Petition); *Petition of Saratoga Aesthetics, LLC for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 27, 2015) (Saratoga Petition); *Petition of Royal Canin U.S.A., Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 27, 2015) (Royal Canin Petition); *Petition of Salix Pharmaceuticals, Inc. and Salix Pharmaceuticals, Ltd. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 27, 2015) (Salix Petition); *Petition of Cephalon, Inc., et al. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (Cephalon Petition); *Petition of Five-M Software Systems Corporation for Waiver*, GC Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (Five-M Petition); *Petition of Valeant Pharmaceuticals North America, LLC for Waiver of 47 C.F.R. § 64.1200(a)(iv)(4)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (Valeant Petition); *Petition of Navinet, Inc. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (Navinet Petition); *Petition of First Index, Inc. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (First Index Petition); *Petition of Integrated Pain Management, S.C., et al. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (IPM Petition); *Petition of Electronic Funds Source LLC for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (EFS Petition); *Petition of TruckersB2B, LLC for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2015) (Truckers Petition); *Petition of Graduation Source, LLC and Graduation Solutions LP for Retroactive Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Graduation Petition); *Petition of American Homepatient, Inc. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Homepatient Petition); *Petition of International Dental Supply Co. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Intnt'l Dental Petition); *Petition of Electrical Enlightenment, Inc. and the Enlightenment Companies for Retroactive Waiver of 47 C.F.R. § 64.122(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (EEI Petition); *Petition of Versa Cardio, LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Versa Petition); *Petition of Wells Fargo & Company for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Wells Fargo Petition); *Petition of ChappellRoberts, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (ChappellRoberts Petition); *Petition of UBM LLC for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (UBM Petition); *Petition of Direct Energy Services, LLC, et al. for Retroactive Waiver of 42[sic] C.F.R. §64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Direct Energy Petition); *Petition of Smith Nephew, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Smith Petition); *Petition of Microwize Technology, Inc. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Microwize Petition); *Petition of MedTech Imaging, Inc. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (MedTech Petition); *Petition of 2217044 Ontario Inc., et al. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Ontario Petition); *Petition of Greenway Health, LLC for Retroactive Waiver of 47 C.F.R. § 64.1200 (a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 29, 2015) (Greenway Petition); *Petition of CVS Health Corporation and Caremark, L.L.C. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (CVS Petition); *Petition of Free Continuing Education Association, LLC d/b/a FCEA, et al. for Waiver of Section 64.1200(a)(iv)(4) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (FCEA Petition); *Petition of Sinopec USA, Inc. for Retroactive Waiver of 47 C.F.R. § 12.00(a)(4)(iv)*, CG Docket No. 05-338 (filed Apr. 30, 2015) (Sinopec Petition); *Petition of Henry Schein Practice Solutions, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(iv)(4)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Schein Petition); *Petition of Be-Thin, Inc. and Keven Eberly for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Be-Thin Petition); *Petition of Diagnostic Imaging Holdings, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket No. 05-338 (filed Apr. 30, 2015) (DIH Petition); *Petition*

Specifically, the Petitioners seek retroactive waivers of the opt-out notice requirement for fax ads they sent where prior express invitation or permission allegedly had been obtained from the recipient.³ The Petitioners argue that good cause exists because they are similarly situated to parties who were granted retroactive waivers from this requirement by the Commission in the recent *Anda Order*.⁴ In the

of Insight Health Services Holdings Corp. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules, CG Docket No. 05-338 (filed Apr. 30, 2015) (Insight Petition); *Petition of McAllister Software Systems, LLC for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (McAllister Petition); *Petition of Dental Resource Systems, Inc., et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (DRS Petition); *Petition of Management Information Technology Corp., et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (MITC Petition); *Petition of Hoffman Pizza, Inc. and Glen Spiegler for Retroactive Waiver of 47 C.F.R. § 1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Hoffman Petition); *Petition of American Capital Croup and Carl Heaton for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (ACG Petition); *Petition of Websolv Computing, Inc. and Uday Om Ali Pabrai for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Websolv Petition); *Petition of Trinity Physician Financial & Insurance Services and Joseph Hong for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Trinity Petition); *Petition of C&T Pizza, et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (C&T Petition); *Petition of Stryker Lubricant Distributors, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Stryker Petition); *Petition of Zydus Pharmaceuticals (USA), Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Zydus Petition); *Petition of Rehab Missouri, LLC d/b/a Rehab Xcel, et al. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Rehab Petition); *Petition of Business Financial Services, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (BFS Petition); *Petition of Key Health Group, Inc., et al. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Apr. 30, 2015) (Key Petition) (collectively Petitioners).

³ See Consumer Energy Petition at 3; Practice Recruiters Petition at 2; IPS Petition at 5-6; American Health Petition at 4; Virtuox Petition at 5-6; FCS Petition at 6; Nomax Petition at 3; Heska Petition at 3; Odyssey Petition at 8; GE Healthcare Petition at 3; AP&G Petition at 4; Competitive Health Petition at 4; Geier Petition at 4; Kaberline Petition at 3; Logistic Petition at 5; CCI Petition at 5; Saratoga Petition at 5-6, 7; Royal Canin Petition at 5-6; Salix Petition at 3; Cephalon Petition at 7; Five-M Petition at 3; Valeant Petition at 5; Navinet Petition at 5; First Index Petition at 5; IPM Petition at 5; EFS Petition at 3; Truckers Petition at 3; Graduation Petition at 6; Homepatient Petition at 5; Intnt'l Dental Petition at 5; EEI Petition at 2-3; Versa Petition at 3-4; Wells Fargo Petition at 3-4; ChappellRoberts Petition at 6; UBM Petition at 5; Direct Energy Petition at 2, 4; Smith Petition at 5; Microwize Petition at 3-4, 6; MedTech Petition at 6; Ontario Petition at 5-6; Greenway Petition at 3-4; CVS Petition at 4-5; FCEA Petition at 4; Sinopec Petition at 4; Schein Petition at 3; Be-Thin Petition at 5-6; DIH Petition at 4-5, 7; Insight Petition at 4-5, 7; McAllister Petition at 3; DRS Petition at 3-4; MITC Petition at 3-4; Hoffman Petition at 3-4; ACG Petition at 3-4; Websolv Petition at 3-4; Trinity Petition at 3-4; C&T Petition at 3-4; Stryker Petition at 5; Zydus Petition at 4; Rehab Petition at 4; BFS Petition at 4-5; Key Petition at 3-4.

⁴ See, e.g. Consumer Energy Petition at 3; Practice Recruiters Petition at 3; IPS Petition at 6; American Health Petition at 4; Virtuox Petition at 5-6; FCS Petition at 6; Nomax Petition at 1; Heska Petition at 3; Odyssey Petition at 5, 6; GE Healthcare Petition at 3; AP&G Petition at 4; Competitive Health Petition at 2; Geier Petition at 6; Kaberline Petition at 5; Logistic Petition at 1; CCI Petition at 2; Saratoga Petition at 10; Royal Canin Petition at 5-6; Salix Petition at 3; Cephalon Petition at 9; Five-M Petition at 4; Valeant Petition at 5; Navinet Petition at 5; First Index Petition at 5; IPM Petition at 4-5; EFS Petition at 4; Truckers Petition at 3; Graduation Petition at 5, 8; Homepatient Petition at 4-5; Intnt'l Dental Petition at 4; EEI Petition at 2-3; Versa Petition at 3; Wells Fargo Petition at 3-4; ChappellRoberts Petition at 7-8; UBM Petition at 5; Direct Energy Petition at 2; Smith Petition at 5; Microwize Petition at 6; MedTech Petition at 2; Ontario Petition at 2, 5; Greenway Petition at 1; CVS Petition at 4; FCEA Petition at 6; Sinopec Petition at 3; Schein Petition at 3; Be-Thin Petition at 2; DIH Petition at 7; Insight Petition at 7; McAllister Petition at 3-4; DRS Petition at 3-4; MITC Petition at 3; Hoffman Petition at 3; ACG Petition at 3; Websolv Petition at 3; Trinity Petition at 3; C&T Petition at 3; Stryker Petition at 4; Zydus Petition at 4; Rehab Petition at 4; BFS Petition at 1, 3; Key Petition at 3-4; *Petition for Declaratory Ruling, Waiver, and/or*

Anda Order, the Commission granted retroactive waivers to several individual petitioners because of uncertainty about whether the opt-out notice applied to “solicited” faxes.⁵

The waivers granted in the *Anda Order* apply only to the individual petitioners listed in that order.⁶ The Commission noted, however, that other, similarly situated parties may also seek waivers. We therefore seek comment on the Petitioners’ requests for waiver consistent with the guidance set forth in the *Anda Order*.

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 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.⁷ 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

Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission, CG Docket Nos. 02-278, 05-338, Order, FCC 14-164, paras. 22-31 (rel. Oct. 30, 2014) (*Anda Order*).

⁵ *See Anda Order* at paras. 22-30.

⁶ *See id.* at para. 22.

⁷ 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: Rebecca A. Hirselj, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7603; or Rebecca.Hirselj@fcc.gov.

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