



PUBLIC NOTICE

Federal Communications Commission
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DA: 15-979
Released: August 31, 2015

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING FILED BY ANTHEM, INC.

CG Docket No. 02-278

Comment Date: September 30, 2015
Reply Comment Date: October 15, 2015

On June 10, 2015, Anthem, Inc. (Anthem) filed a petition for declaratory ruling requesting that the Commission “expressly except[] non-telemarketing health care-related calls from the current restrictions that otherwise apply under the Telephone Consumer Protection Act (TCPA).”¹

According to Anthem, it and other health plans and providers make voice calls and send text messages to members to provide important information regarding their healthcare.² For example, Anthem states that it makes calls to customers with existing medical conditions to aid in their treatment and obtain better outcomes, to provide customers with information necessary to seek preventative care, and to provide information about using and maintaining medical benefits.³ Anthem states that these calls and messages have been shown to result in better healthcare outcomes and are welcomed by the majority of consumers.⁴ It points to studies indicating that text message healthcare reminders and follow-up calls improved patient compliance and outcomes.⁵ Anthem states that its contracts with state Medicaid agencies may even require it to provide various types of outreach by telephone.⁶

¹ *Petition for Declaratory Ruling and Exemption Regarding Non-telemarketing Healthcare Calls*, CG Docket No. 02-278, filed by Anthem, Inc. on June 10, 2015, at 1 (*Petition*). The TCPA is codified as 47 U.S.C. § 227. The Commission’s implementing rules are codified as 47 C.F.R. § 64.1200. In relevant part, the TCPA prohibits any person within the United States from making “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service . . . or any service for which the called party is charged for the call.” 47 U.S.C. § 227(b)(1).

² *Petition* at 1.

³ *Id.* at 15-17.

⁴ *Id.* at 2, 8-10.

⁵ *Id.* at 4-6.

⁶ *Id.* at 7.

Anthem requests that the Commission exempt from the TCPA's restrictions non-telemarketing health care-related calls and text messages aimed at improving health outcomes from healthcare plans or providers to consumers with whom they have an existing relationship.⁷ It requests that such calls or texts be subject to an opt-out, rather than opt-in, regime.⁸ We seek comment on this and any other issues raised in the *Petition*.⁹

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 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.¹⁰ Persons making *ex parte* presentations must file a

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ The Commission recently granted an exemption for certain non-telemarketing calls made for healthcare treatment purposes and that are not charged to the called party. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, FCC 15-72, paras. 143-48 (released July 10, 2015). Anthem appears to request relief that differs from that granted by this exemption. For example, Anthem requests relief with regard to other types of calls than those subject to the exemption and does not indicate that the calls would not be charged to the called party.

¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*

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: Jerusha Burnett, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-0526; Jerusha.Burnett@fcc.gov.

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