



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR DECLARATORY RULING FILED BY LIFETIME ENTERTAINMENT SERVICES, LLC

CG Docket No. 02-278

Comment Date: March 7, 2016

Reply Comment Date: March 21, 2016

With this Public Notice, we seek comment on a petition for declaratory ruling filed by Lifetime Entertainment Services, LLC (Lifetime),¹ asking the Commission to clarify that the restrictions of the Telephone Consumer Protection Act of 1991 (TCPA)² do not apply to prerecorded calls providing information about television programming distributed by cable operators and cable programming networks that are intended to reach the cable operator's subscribers who are already entitled to watch the programming without having to pay any additional charges.³ In the alternative, Lifetime requests that such calls at issue in litigation⁴ be granted a retroactive waiver of Section 64.1200(a)(3) of the Commission's rules.⁵

The TCPA prohibits the initiation of prerecorded non-emergency calls to residential telephone lines without the prior express consent of the called party.⁶ Commission rules exempt from this prohibition calls that are not made for a commercial purpose and those made for a commercial purpose

¹ Lifetime Entertainment Services, LLC Petition for Declaratory Ruling to Clarify Scope of Rule 64.1200(a)(3) or, in the Alternative, for Retroactive Waiver, CG Docket No. 02-278 (filed Dec. 11, 2015) (Petition). Lifetime states that it "operates the Lifetime® cable television network. Its programming includes . . . 'Project Runway,' an award-winning reality show featuring a clothing design competition." *Id.* at 4.

² The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 CFR § 64.1200.

³ Petition at 1.

⁴ *Leyse v. Lifetime Entm't Servs., LLC*, No. 1:13-cv-05794-AKH, ECF no. 66 (S.D.N.Y. May 15, 2015).

⁵ Petition at 1, 4.

⁶ 47 U.S.C. § 227(b)(1)(B).

but do not include any unsolicited advertisement.⁷ In 2003, after seeking comment on prerecorded calls initiated by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or similar opportunity, the Commission declined to adopt new rules regarding such calls, noting that they are permitted as “a commercial call that does not include or introduce an unsolicited advertisement or constitute a telephone solicitation.”⁸ The Commission noted, however, that calls “that encourage consumers to listen to or watch programming, including programming that is retransmitted broadcast programming for which consumers must pay (e.g., cable, digital satellite, etc.), would be considered advertisements for purposes of our rules.”⁹

Lifetime argues that prerecorded calls from cable operators and cable programming networks to residential lines that are intended to reach subscribers who are already entitled to watch the relevant programming at no additional charge should be viewed as informational.¹⁰ Lifetime asks the Commission to clarify that a call to provide information about a service change is not made for a commercial purpose,¹¹ that such informational calls are neither advertising nor telemarketing, and that these calls are therefore not prohibited by the TCPA and the Commission’s rules.¹² Alternatively, Lifetime asks the Commission to grant a retroactive waiver of section 64.1200(a)(3) of the Commission’s rules for the calls at issue in the related litigation, stating that removing such calls from liability would be consistent with the statutory purpose of the TCPA and Commission precedent, and that subjecting cable programmers to the burden and cost of litigation would discourage the flow of useful information to subscribers and viewers, contrary to the public interest.¹³

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.

⁷ 47 CFR § 64.1200(a)(3).

⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14100, para. 145 (2003) (*2003 TCPA Order*) (citing amended 47 CFR § 64.1200(a)(2)(iii)).

⁹ *2003 TCPA Order*, 18 FCC Rcd at 14100, para. 145, n.499, *recon. denied*, 20 FCC Rcd 3788, 3806, para. 44 (2005).

¹⁰ Petition at 9.

¹¹ *Id.* at 10.

¹² *Id.* at 14.

¹³ *Id.* at 20.

- 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.¹⁴ 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: Karen Schroeder, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-0654; Karen.Schroeder@fcc.gov.

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¹⁴ 47 CFR §§ 1.1200 *et seq.*