



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR RETROACTIVE WAIVER FILED BY BEBE STORES, INC.

CG Docket No. 02-278

Comment Date: January 6, 2017
Reply Comment Date: January 23, 2017

With this Public Notice, we seek comment on a petition filed by bebe stores, inc.¹ (bebe) requesting a retroactive waiver of the Commission's prior-express-written-consent requirement for automated telemarketing calls similar to the waiver granted recently to other parties who, bebe states, are similarly situated.²

In 2012, the Commission adopted rules pursuant to the Telephone Consumer Protection Act (TCPA)³ that required prior express written consent for autodialed, prerecorded, or artificial voice

¹ Petition for Expedited Declaratory Ruling Granting a Limited, Retroactive Waiver of Section 64.1200(a)(2) of the Federal Communications Commission's Rules filed by bebe stores, inc., CG Docket No. 02-278, at 1 (filed on Nov. 18, 2016) (*Petition*). Bebe states that its core business is "retail sales of women's fashion and accessories in both brick-and-mortar stores across the nation and from its commercial website www.bebe.com." *Id.* at 1. Bebe notes that a very large percentage of its customers are members of its "clubbebe" loyalty program. *Id.* According to bebe, as members of the loyalty program, customers who provide a cell phone number expressly consent, by the terms and conditions of the program, to receive an opt-in text message to initiate their enrollment in bebe Texts. *Id.* at 2-3. Bebe states that, upon receipt of the opt-in text message, the customers (if they choose to do so) could complete the enrollment by sending a response text but if the customer does not text an opt-in response, no further texts are sent to the customer. *Id.* at 3. Bebe also points out that it "does not purchase contact information from third parties or vendors, and has only ever contacted by text message those customers who voluntarily provided their cell phone number to bebe in order to initiate their enrollment in bebe Texts." *Id.* at n.3.

² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8014-15, para. 102 (2015 TCPA Order); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Waiver and/or Retroactive Waiver of 47 C.F.R. Section 64.1200 (a)(2) Regarding the Commission's Prior Written Consent Requirement*, CG Docket No. 02-278, Order, (CGB Oct. 14, 2016).

³ The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 CFR § 64.1200.

telemarketing calls to wireless telephone numbers and for prerecorded or artificial voice telemarketing calls to residential telephone numbers.⁴

In support of its request, bebe asserts that good cause exists for such a waiver because special circumstances warrant deviation from the general rule and because a waiver would serve the public interest.⁵ Specifically, bebe asserts that it is similarly situated to the parties who have already received a retroactive waiver of the written consent requirement because it faced the same confusion they did regarding the implementation of this written consent requirement.⁶ More particularly, bebe states it could reasonably have interpreted the Commission's prior-express-written-consent requirement to mean that "written consent obtained by bebe prior to the current rule's effective date would remain valid even if it does not satisfy the current rule."⁷

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 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).

⁴ 47 CFR § 64.1200(a)(2), (3).

⁵ *Petition* at 8-9.

⁶ *Id.* at 10-11

⁷ *Id.* at 10. Bebe also notes that there is pending class action litigation arising from the opt-in texts sent to customers pursuant to its bebe Texts program. *Id.* at 3-4.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸ 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.

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⁸ 47 CFR §§ 1.1200 *et seq.*