



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
PETITION FOR DECLARATORY RULING FILED BY TODD C. BANK
REGARDING THE TCPA'S PROVISION CONCERNING PRERECORDED CALLS**

CG Docket No. 02-278

Comment Date: May 2, 2016
Reply Comment Date: May 17, 2016

With this Public Notice, we seek comment on a petition for declaratory ruling filed by Todd C. Bank (Bank)¹ asking the Commission to clarify whether a telephone line in a home that is used for business purposes can be considered a “residential” line under the Telephone Consumer Protection Act (TCPA)² and the Commission’s implementing rules. The Commission’s rules require in pertinent part that a caller obtain prior express consent from the called party before initiating a telemarketing call to a residential telephone line using an artificial or prerecorded voice.³

Bank is an attorney with a law practice based in his home.⁴ The telephone number that Bank uses for his business is listed publicly as both a business and a residential number.⁵ Bank asks the Commission to clarify the scope of its rules to establish a “bright-line” test that when a telephone line is

¹ See *Petition for Declaratory Ruling to Clarify the Scope of Rule 64.1200(a)(2)*, CG Docket No. 02-278, filed by Todd C. Bank on Mar. 7, 2016 (*Petition*).

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

³ 47 CFR § 64.1200(a)(3). We note that although the petitioner cites section 64.1200(a)(2) of the Commission’s rules in his petition, he appears to be referring to the current section 64.1200(a)(3), which concerns artificial or prerecorded voice calls to residential lines. The Commission’s relevant rule was amended and renumbered in February 2012, see *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830 (2012), after the call at issue in the petitioner’s underlying litigation, see *Petition Ex. A* at 2 (Bank received call at issue on Jan. 17, 2012).

⁴ *Petition* at 1.

⁵ *Id.* at 1.

provided as “residential” service by the telephone service provider, it is subject to the Commission’s rules prohibiting calls using an artificial or prerecorded voice to a “residential line.”⁶

We seek comment on whether the Commission should, as a matter of clarifying the statute and its rules, (1) establish such a bright-line test for identifying a “residential line” under the prohibition against unconsented-to calls using an artificial or pre-recorded voice, (2) adopt some other bright-line test to identify such lines, or (3) identify some other method, such as a multi-factor analysis, for determining whether a telephone line is a “residential line” for purposes of the artificial/prerecorded voice call prohibition. We seek comment on which factors should be considered by the Commission were it to adopt a multi-factor approach. We also seek comment on 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).

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

⁶ 47 CFR § 64.1200(a)(3) (implementing 47 U.S.C. § 227(b)(1)(B)).

⁷ 47 CFR §§ 1.1200 *et seq.*

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: Robert Finley, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7835 or Robert.Finley@fcc.gov.

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