



PUBLIC NOTICE

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
NETWORK COMMUNICATIONS INTERNATIONAL CORP.
PETITION FOR EXPEDITED DECLARATORY RULING**

CG Docket No. 02-278

Comment Date: July 7, 2016

Reply Comment Date: July 22, 2016

With this Public Notice, we seek comment on a petition for expedited declaratory ruling filed by Network Communications International Corp. (NCIC).¹ In its petition, NCIC seeks a declaratory ruling that its use of a one-time informational text message to establish a billing relationship with a called party who does not answer or respond to a collect call from an inmate using NCIC's inmate calling service (ICS) does not require prior express consent from the called party because: (a) such texts are covered by an exemption granted in response to another ICS provider's request; (b) the text is initiated by inmate callers and not NCIC; and/or (c) the text is not sent by an automatic telephone dialing system (autodialer).²

The Telephone Consumer Protection Act (TCPA) and the Commission's implementing rules³ require prior express consent for non-emergency autodialed, prerecorded, or artificial-voice calls to wireless telephone numbers, regardless of content.⁴ The Commission has determined that "calls" under the TCPA include text messages.⁵

¹ Petition of Network Communications International Corp. for Declaratory Ruling, CG Docket No. 02-278, (filed May 10, 2016), <http://apps.fcc.gov/ecfs/comment/view?id=60001739350> (*Petition*). NCIC provides inmate calling services, which allow incarcerated individuals to place collect calls from correctional facilities to residential or wireless phone lines. *Id.* at 2. NCIC notes that inmates often initiate collect calls through an ICS provider and cannot get their calls completed either because the called party's wireless service provider blocks the incoming collect call, the called party misses the call, or the called party does not recognize the correctional facility's caller identification number and therefore does not answer the call. *Id.*

² *Petition* at 1, 16.

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

⁴ 47 U.S.C § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1).

⁵ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8020, para. 120 (2015) (*2015 TCPA Order*); Rules and

NCIC asserts that allowing it to send a follow-up text message without the called party's prior express consent when an inmate cannot complete a collect call is consistent with the Commission's established policies that recognize the difficulties ICS providers face to facilitate calls from inmates.⁶ Moreover, NCIC claims that its texting protocol is virtually identical to another ICS provider's calling protocol that the Commission exempted from the TCPA consent requirement.⁷ Under that exemption, as many as three follow-up prerecorded phone calls may be made without prior express consent to notify a called party about an inmate's unsuccessful collect call attempt.⁸ Finally, NCIC argues that its single follow-up text would not contravene the TCPA because its system doesn't utilize an autodialer and because the text message through NCIC's ICS system would actually be initiated by the inmate's call.⁹

We seek comment on these and any other issues raised by 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 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.

Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

⁶ *Petition* at 1, 4-6 (citing *2015 TCPA Order*, 30 FCC Rcd at 7984-89, paras. 38-46).

⁷ *Petition* at 6-7. The *2015 TCPA Order* concluded that ICS providers could avail themselves of an exemption from the prior express consent requirement as long as they followed seven conditions, including that the calls in question result in no charge to the called party, which is a statutory requirement for such an exemption. *2015 TCPA Order*, 30 FCC Rcd at 7989, para. 45. NCIC claims that its follow-up text message protocol would "strictly comply" with the exemption conditions set forth in the *2015 TCPA Order*. *Petition* at 7. We note, however, that NCIC also states that its text message protocol would only "substantially comply" with the no-charge condition of the exemption because there "could be an incremental cost" for a "few cellphone users." *Id.* at 7-8.

⁸ *See 2015 TCPA Order*, 30 FCC Rcd at 7989, para. 45.

⁹ *Id.* at 12-15.

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This proceeding 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 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: Josh Zeldis, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-0715 (voice) or Josh.Zeldis@fcc.gov.

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¹⁰ 47 CFR §§ 1.1200 *et seq.*