



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

DA 16-863
Released: July 29, 2016

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON RINGCENTRAL, INC. PETITION FOR EXPEDITED DECLARATORY RULING

CG Docket No. 02-278

Comment Date: August 29, 2016

Reply Comment Date: September 13, 2016

With this Public Notice, we seek comment on a petition for expedited declaratory ruling filed by RingCentral, Inc. (RingCentral).¹ In its petition, RingCentral seeks a declaratory ruling clarifying that a fax broadcaster, whose services are used by a third party, is not a “sender” of a facsimile for purposes of the Telephone Consumer Protection Act (TCPA) prohibition against sending unsolicited advertisements by facsimile.² RingCentral also requests that the Commission clarify that *de minimis* promotional phrases contained in another party’s facsimile transmission do not constitute “unsolicited advertisements”³ or, in the alternative, that fax broadcasters can rely on third-party consent to send such *de minimis* promotional content along with a facsimile that is otherwise lawfully sent by the fax broadcaster’s customer to a third-party recipient.⁴

¹ RingCentral, Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, (filed July 6, 2016), <https://www.fcc.gov/ecfs/filing/1070607960528/document/1070607960528c204> (*Petition*). RingCentral provides cloud-based phone systems for businesses, such as Internet-based facsimile services. *Id.* at 2. A RingCentral customer can send fax communications via the RingCentral website, through a desktop computer application, mobile application, email, or other application. *Id.* According to the *Petition*, RingCentral does not control the content, choose recipients, or choose whether to send a fax, but does offer its customers the option of using prepackaged facsimile cover sheet templates that include the RingCentral logo, the RingCentral web address and the slogan, “Send and receive faxes with RingCentral.” *Id.* RingCentral notes that its RingCentral Terms of Service prohibit customers from using the RingCentral service in a way that violates the TCPA or the Junk Fax Prevention Act of 2005 and state that the customer is solely responsible for the content, destination, and sending of facsimile messages. *Id.* at 7.

² *Petition* at 1, 23. The Commission’s TCPA implementing rules are codified as 47 CFR § 64.1200. Among other things, the TCPA and the related rules prohibit the use of a “telephone facsimile machine, computer, or other device” to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. § 227(b)(1)(C); 47 CFR § 64.1200(a)(4). The TCPA defines “sender” as “the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.” 47 CFR § 64.1200(f)(10).

³ *Petition* at 1, 27.

⁴ *Id.* at 2, 30.

RingCentral asserts that both courts and industry would benefit from the Commission's clarification of liability when a plaintiff alleges receipt of an unsolicited facsimile advertisement.⁵ Specifically, RingCentral requests that the FCC make clear that a person is not the "sender" of a facsimile if that person did not directly or indirectly choose the content of the facsimile and that the phrase "whose goods or services are advertised or promoted in" an unsolicited facsimile applies only to a person who directly or indirectly initiated that advertising or promotion.⁶ In addition, RingCentral asks that the Commission provide guidance on how much advertising content is permissible within a facsimile communication before it will no longer be considered a *de minimis* amount of advertising and, instead, an unsolicited advertisement barred by the TCPA.⁷ In the alternative, RingCentral requests that the Commission provide the more narrow relief of clarifying when a facsimile broadcaster can lawfully rely on consent obtained by its customer to include *de minimis* information in its customer's facsimile to a third-party recipient.⁸

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.

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 and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

⁵ *Id.* at 19-23.

⁶ *Id.* at 24.

⁷ *Id.* at 27. RingCentral suggests a threshold percentage of 5% of the overall length of a cover page attendant to a fax. *Id.* at 28.

⁸ *Id.* at 29.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹ 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.

-- FCC --

⁹ 47 CFR §§ 1.1200 *et seq.*