



PUBLIC NOTICE

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

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

DA 16-878

Released: August 1, 2016

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON NATIONAL CONSUMER LAW CENTER PETITION FOR RECONSIDERATION OF THE FCC'S BROADNET DECLARATORY RULING

CG Docket No. 02-278

Comment Date: August 31, 2016

Reply Comment Date: September 15, 2016

With this Public Notice, we seek comment¹ on a petition for reconsideration of declaratory Ruling, filed by the National Consumer Law Center (NCLC) on behalf of its low-income clients and 50 other national, state, and local legal aid programs and public interest organizations.² In its *Petition*, NCLC seeks a stay and reversal of the Commission's *Broadnet Declaratory Ruling*.³ *Broadnet* clarifies that the term "person" as used in section 227 of the Communications Act of 1934, as amended,⁴ "does not include a contractor when acting on behalf of the federal government, as long as the contractor is acting as the government's agent in accord with the federal common law of agency."⁵ Therefore, "a government contractor will be able to invoke the federal government's exception from" the Telephone Consumer Protection Act (TCPA)⁶ "when the contractor has been validly authorized to act as the government's agent and is acting within the scope of its contractual relationship with the government, and the

¹ The comment period set out in this Public Notice is in lieu of the pleading cycle for oppositions and replies to petitions for reconsideration in non-rulemaking proceedings specified in 47 CFR §§ 1.106(g) and (h), which would have allowed 10 days for filing oppositions and 7 additional days for filing a reply to the oppositions. Pursuant to 47 CFR § 1.3, the Commission may, on its own motion, waive a rule for good cause. We find good cause to waive 47 CFR §§ 1.106(g) and (h) here because the important and complex issues presented in the instant petition warrant allowing interested parties a longer period to file comments and reply comments, which will result in a fuller and more informative record.

² Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278, (filed July 26, 2016), <https://www.fcc.gov/ecfs/filing/10726059270343> (*Petition*). NCLC is a nonprofit corporation that assists legal services, consumer law attorneys, consumer advocates, and public policy makers in consumer law matters. *Id.* at 2. NCLC filed the *Petition* on behalf of its low-income clients, 22 legal aid programs, and 28 advocacy organizations. *Id.* at 1. We seek comment on its Request for Stay in a separate Public Notice with a different comment cycle.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Declaratory Ruling by Broadnet Teleservices LLC, National Employment Network Association, RTI International*, CG Docket No. 02-278, Declaratory Ruling, FCC 16-72, (July 5, 2016) (*Broadnet Declaratory Ruling* or *Broadnet*).

⁴ The Communications Act defines "person" to "include[] an individual, partnership, association, joint-stock company, trust, or corporation." 47 U.S.C. § 153(39).

⁵ *Broadnet Declaratory Ruling* at para. 16.

⁶ The TCPA is codified at 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200.

government has delegated to the contractor its prerogative to make autodialed or prerecorded- or artificial-voice calls to communicate with its citizens.”⁷

NCLC asserts that reconsideration is appropriate because the Commission did not fully consider consumer interests.⁸ It states that the Public Notices issued for the three petitions resolved in the *Broadnet* did not adequately indicate that the Commission would be considering whether federal contractors or federal agents would be excluded from the TCPA.⁹ NCLC further maintains that reconsideration of *Broadnet* is appropriate because: low-income persons who use prepaid wireless calling plans will be adversely impacted by unlimited calling by federal contractors;¹⁰ the decision is inconsistent with recently added exceptions to the TCPA,¹¹ which, NCLC asserts, “make it clear that the TCPA applies to federal contractors” because they would not have been necessary if the TCPA were not applicable;¹² and the Commission misinterpreted the Supreme Court’s decision in *Campbell-Ewald*, which did not address the term “person,” by conflating the concepts of derivative sovereign immunity or qualified immunity with the scope of the term “person” under the TCPA.¹³

We seek comment on these and any other issues raised by the petition for reconsideration.

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.

⁷ *Broadnet Declaratory Ruling* at para. 17.

⁸ *Id.* at 6.

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 10.

¹¹ *See* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (Budget Act) § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B) to read, in part, that artificial- or prerecorded-voice calls cannot be made to a residential telephone line without the consent of the called party unless the call is “made solely pursuant to the collection of a debt owed to or guaranteed by the United States”).

¹² *Petition* at 12.

¹³ *Id.* at 13-15.

- 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).

This proceeding 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 (voice) or Karen.Schroeder@fcc.gov.

-- FCC --

¹⁴ 47 CFR §§ 1.1200 *et seq.*