



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON NATIONAL CONSUMER LAW CENTER REQUEST FOR STAY OF THE FCC'S BROADNET DECLARATORY RULING PENDING RECONSIDERATION

CG Docket No. 02-278

Comment Date: August 11, 2016
Reply Comment Date: August 16, 2016

With this Public Notice, we seek comment on a request for stay of the Commission's *Broadnet Declaratory Ruling*¹ pending reconsideration, filed by the National Consumer Law Center² on behalf of its low-income clients and 50 other national, state, and local legal aid programs and public interest organizations (NCLC).³ In its *Request*, NCLC seeks a stay of the *Broadnet Declaratory Ruling*. *Broadnet* clarifies that the term "person" as used in section 227 of the Communications Act of 1934, as

¹ *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*).

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> (*Request*). 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 *Request* on behalf of its low-income clients, 22 legal aid programs, and 28 advocacy organizations. *Id.* at 1. We seek comment on its Petition for Reconsideration of the Declaratory Ruling in a separate Public Notice with a different comment cycle.

³ Section 1.44(e) of the Commission's rules, 47 CFR § 1.44(e), specifies that any request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. NCLC filed its pleading as both a Petition for Reconsideration and a Request for Stay Pending Reconsideration. Section 1.3 of the Commission's rules provides that "provisions of this chapter may be . . . waived for good cause shown, in whole or in part, at any time by the Commission" and that the Commission may waive any provision of the rules on its own motion. *Id.* § 1.3. We find good cause to waive the separate filing requirement of section 1.44(e) in this instance because of the unusually complex legal and factual issues, the interrelation with the Bipartisan Budget Act of 2015, and the importance of this issue, which is underscored by the number of groups that have joined NCLC in its request for a stay. *See* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (amending the Telephone Consumer Protection Act). The comment period established in this Public Notice is in lieu of the pleading cycle for stay requests specified by 47 CFR § 1.45(d), which requires oppositions to be filed within seven days of the request's filing, and forbids replies to oppositions. Pursuant to 47 CFR § 1.3, we find good cause to waive section 1.45(d) because there is no indication the petitioner will be harmed by a brief extension of the pleading cycle and because a somewhat longer pleading cycle will facilitate building a fuller record on important issues, such as irreparable harm. Our decision briefly to extend the pleading cycle is all the more reasonable because the Commission could have dismissed NCLC's stay request in its entirety for failure to comply with the separate filing requirement in our rules. *See* 47 C.F.R. 1.44(e).

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 government has delegated to the contractor its prerogative to make autodialed or prerecorded- or artificial-voice calls to communicate with its citizens.”⁷ NCLC argues that a stay is appropriate because the declaratory ruling will “undoubtedly cause an immediate increase in the number of unwanted robocalls to consumers from contractor-agents of the federal government.”⁸ NCLC further argues that these calls will not likely be limited to the types of calls addressed in the decision, that calls from debt collectors will also likely increase, and that this will cause immediate harm to consumers’ privacy interests and economic interests.⁹

We seek comment on these and any other issues raised by NCLC’s request for stay.

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,

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.

⁷ *Broadnet Declaratory Ruling* at para. 17.

⁸ *Request* at 19.

⁹ *Id.* at 19-20.

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.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: Karen Schroeder, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-0654 (voice) or Karen.Schroeder@fcc.gov.

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¹⁰ 47 CFR §§ 1.1200 *et seq.*