



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PROFESSIONAL SERVICES COUNCIL PETITION FOR RECONSIDERATION OF THE FCC'S BROADNET DECLARATORY RULING

CG Docket No. 02-278

Comment Date: September 14, 2016

Reply Comment Date: September 29, 2016

With this Public Notice, we seek comment¹ on a petition for reconsideration filed by Professional Services Council (PSC).² In its *Petition*, PSC seeks a modification of only that portion of the Commission's *Broadnet Declaratory Ruling*³ "necessary to provide [Telephone Consumer Protection Act (TCPA)] relief to government contractors acting on behalf of the federal government, in accordance with their contract's terms and the government's directives, without regard to whether a common-law agency relationship exists."⁴

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 Professional Services Council Petition for Reconsideration, CG Docket No. 02-278, (filed Aug. 4, 2016), <https://www.fcc.gov/ecfs/filing/10726059270343> (*Petition*). PSC represents more than 400 member companies that provide federal agencies with various services in accordance with the terms of federal contracts. *Id.* at 2.

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 *Petition* at 2. The TCPA is codified at 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200.

Broadnet clarifies that the term “person” as used in section 227 of the Communications Act of 1934, as amended,⁵ “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.”⁶ Therefore, “a government contractor . . . will be able to invoke the federal government’s exception from” the TCPA “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

PSC asserts that reconsideration is appropriate because the Public Notices issued for the three petitions resolved in *Broadnet* did not adequately indicate that the Commission would be considering common-law agency concepts when determining TCPA coverage for government contractors.⁸ PSC further maintains that reconsideration of *Broadnet* is appropriate because: the petitions for declaratory ruling requested clarification for “government contractors calling on behalf of the federal government and in accordance with the terms of a contract and government directives” rather than for agents of the federal government;⁹ government contracts often expressly state that contractors, even if acting on behalf of the federal government and in accordance with the terms of a contract, are not considered agents of the government, which would severely limit the relief granted by *Broadnet*;¹⁰ and the Commission misinterpreted the Supreme Court’s decision in *Campbell-Ewald*,¹¹ which did not include an agency requirement as a condition for invoking derivative sovereign immunity.¹²

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.

⁵ The Communications Act defines “person” to “include[] an individual, partnership, association, joint-stock company, trust, or corporation.” 47 U.S.C. § 153(39).

⁶ *Broadnet Declaratory Ruling* at para. 16.

⁷ *Broadnet Declaratory Ruling* at para. 17.

⁸ *Petition* at 3, 7.

⁹ *Id.* at 7-9.

¹⁰ *Id.* at 12-15.

¹¹ *See Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016).

¹² *Petition* at 8-9.

- 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).

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹³ 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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¹³ 47 CFR §§ 1.1200 *et seq.*