



# PUBLIC NOTICE

Federal Communications Commission  
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DA 17-1054

Released: October 27, 2017

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON  
CONTEXTMEDIA, INC. D/B/A OUTCOME HEALTH PETITION FOR  
CLARIFICATION OR DECLARATORY RULING UNDER THE TELEPHONE  
CONSUMER PROTECTION ACT OF 1991**

**CG Docket No. 02-278**

**Comment Date: November 27, 2017**  
**Reply Comment Date: December 12, 2017**

With this Public Notice, we seek comment on a petition for clarification or, in the alternative, declaratory ruling filed by ContextMedia, Inc. d/b/a Outcome Health (Outcome).<sup>1</sup> Outcome states that “an unknown and inadvertent technical error . . . caused the improper processing of unsubscribe requests in certain limited circumstances” in connection with its health-related text messaging program to which recipients had previously consented.<sup>2</sup> Outcome asks the Commission to clarify that an unknowable technical error is protected from liability under the Telephone Consumer Protection Act<sup>3</sup> pursuant to the Commission’s *SoundBite*<sup>4</sup> decision.<sup>5</sup> Alternatively, Outcome requests that the Commission clarify that an undetected and inadvertent technical error satisfies the requirements for a safe harbor from TCPA liability.<sup>6</sup>

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

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<sup>1</sup> Petition of ContextMedia, Inc. d/b/a Outcome Health for Clarification or, in the Alternative, for Declaratory Ruling, CG Docket No. 02-278 (filed October 20, 2017) (*Petition*).

<sup>2</sup> *Id.* at 5-6.

<sup>3</sup> The Telephone Consumer Protection Act (TCPA) is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200. Among other things, the TCPA and/or the related rules prohibit any call to a telephone number assigned to a “paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call” using any automatic telephone dialing system or an artificial or prerecorded voice other than a call: made for emergency purposes, made with the prior express consent of the called party, or made solely to collect a debt owed to or guaranteed by the United States. 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)-(2).

<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, Declaratory Ruling, 27 FCC Rcd 15391 (2012).

<sup>5</sup> *Petition* at 7-10.

<sup>6</sup> *Id.* at 10-14.

Pursuant to section 1.2 of the Commission's rules,<sup>7</sup> 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 the ECFS: <http://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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 12<sup>th</sup> 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

*Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>8</sup> 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

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<sup>7</sup> 47 CFR § 1.2.

<sup>8</sup> *See id.* §§ 1.1200 *et seq.*

consistent with section 1.1206(b) of the Commission's rules.<sup>9</sup> In proceedings governed by section 1.49(f) of the rules 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).<sup>10</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Additional Information.* For further information, contact Christina Clearwater of the Consumer and Governmental Affairs Bureau at (202) 418-1893 or [Christina.Clearwater@fcc.gov](mailto:Christina.Clearwater@fcc.gov).

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<sup>9</sup> *Id.* § 1.1206(b).

<sup>10</sup> *Id.* § 1.49(f).