



PUBLIC NOTICE

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

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITIONS CONCERNING THE COMMISSION'S RULE ON OPT-OUT NOTICES ON FAX ADVERTISEMENTS

CG Docket No. 02-278
CG Docket No. 05-338

Comment Date: February 23, 2017
Reply Comment Date: March 2, 2017

With this Public Notice, we seek comment on two petitions for waiver¹ of section 64.1200(a)(4)(iv) of the Commission's rules, which requires that an opt-out notice containing certain information be included in fax ads sent to a consumer who has provided prior express invitation or permission to receive them.² The Petitioners seek retroactive waiver of the opt-out notice requirement for fax ads sent by or on their behalf to recipients from whom prior express invitation or permission allegedly had been obtained.³ The Petitioners argue that good cause exists because they are similarly situated to parties granted retroactive waivers from this requirement in the *Anda Order*.⁴

¹ See *Petition of Chester Limited, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Jan. 23, 2017), available at: [https://ecfsapi.fcc.gov/file/10206114019817/Petition-for-Waiver\(4\).pdf](https://ecfsapi.fcc.gov/file/10206114019817/Petition-for-Waiver(4).pdf) (Chester Petition); *Petition of Foot Levelers, Inc. for Retroactive Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Feb. 2, 2013), available at: <https://ecfsapi.fcc.gov/file/10202091367227/FL%20FCC%20Petition.PDF> (Foot Levelers Petition) (collectively Petitioners).

² The rules specify that the opt-out notice contained in fax ads must: (1) be clear and conspicuous and on the first page of the ad; (2) state that the recipient may make a request to the sender not to send any future ads and that failure to comply, within 30 days, with a request is unlawful; and (3) contain a domestic contact telephone number and fax number for the recipient to transmit an opt-out request. If neither the required telephone number nor fax number is a toll-free number, a separate cost-free mechanism, including a Web site address or email address, must be provided for a recipient to transmit a request to opt-out of future faxes. See 47 CFR § 64.1200(a)(4)(iii)-(iv).

³ See Chester Petition at 1, 4; Foot Levelers Petition at 1, 4.

⁴ See Chester Petition at 3; Foot Levelers Petition at 2, 5; *Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, 29 FCC Rcd 13998, 14008-12, paras. 22-31 (2014) (*Anda Order*).

In the *Anda Order*, the Commission granted retroactive waivers to several individual petitioners because of uncertainty about whether the opt-out notice requirement applied to “solicited” faxes.⁵

The waivers granted in the *Anda Order* apply only to the individual petitioners listed in that order.⁶ The Commission noted, however, that other, similarly situated parties may also seek waivers.⁷ We therefore seek comment on the Petitioners’ requests for waiver consistent with the guidance set forth in the *Anda Order*.

Comments and Reply Comments. Pursuant to section 4(j) of the Communications Act of 1934 and section 1.1 of the Commission’s rules, we invite interested parties to file comments and reply comments on or before the dates indicated on the first page of this document.⁸ Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS); or (2) by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the website for submitting comments.
- **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 or 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.

Comments and reply comments filed in response to this Public Notice will be available via ECFS. These documents also will be available for public inspection during regular business hours in

⁵ See *Anda Order*, 29 FCC Rcd at 14008-12, paras. 22-30.

⁶ See *id.* at 14008, para. 22.

⁷ *Id.*

⁸ 47 U.S.C. § 154(j); 47 CFR § 1.1.

the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554.

Accessibility Information. 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).

Ex Parte Rules. 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 section 1.1206(b) of the Commission’s rules.¹⁰ 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).¹¹ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Additional Information. For further information, contact Rebecca A. Hirselj of the Consumer and Governmental Affairs Bureau, at (202) 418-7603 or Rebecca.Hirselj@fcc.gov.

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⁹ See 47 CFR §§ 1.1200 *et seq.*

¹⁰ 47 CFR § 1.1206(b).

¹¹ 47 CFR § 1.49(f).