



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR RETROACTIVE WAIVER FILED BY VISALUS, INC. UNDER THE TELEPHONE CONSUMER PROTECTION ACT

CG Docket No. 02-278

Comment Date: July 16, 2018

Reply Comment Date: July 30, 2018

With this Public Notice, we seek comment on a petition for retroactive waiver and request for expedited ruling filed by ViSalus, Inc. (ViSalus).¹ ViSalus, which describes itself as a multi-level marketing company in the business of selling healthy lifestyle products,² asks the Commission to grant it a retroactive waiver of the Commission's prior-express-written-consent requirement for automated telemarketing calls³ similar to the waivers previously granted to other parties who, ViSalus states, are similarly situated.⁴

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

Pursuant to section 4(j) of the Communications Act of 1934 and section 1.1 of the Commission's rules,⁵ 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).

¹ Petition for Retroactive Waiver of ViSalus, Inc., CG Docket No. 02-278 (filed Sept. 14, 2017) (*Petition*).

² *Petition* at 1.

³ 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. Since 2013, these rules have required prior express written consent for autodialed, prerecorded, or artificial voice telemarketing calls to wireless telephone numbers and for prerecorded or artificial voice telemarketing calls to residential telephone numbers. 47 CFR § 64.1200(a)(2), (3).

⁴ *Petition* at 1, 3-4, 7; see *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8014-15, para. 102 (2015); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Waiver and/or Retroactive Waiver of 47 C.F.R. Section 64.1200 (a)(2) Regarding the Commission's Prior Written Consent Requirement*, Order, 31 FCC Rcd 11643 (CGB 2016).

⁵ 47 U.S.C. § 154(j); 47 CFR § 1.1.

- 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 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- 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 & 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.⁶ 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.⁷ 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,

⁶ See *id.* §§ 1.1200 *et seq.*

⁷ *Id.* § 1.1206(b).

searchable .pdf).⁸ 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.

⁸ *Id.* § 1.49(f).