



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON NATIONAL ASSOCIATION OF CHAIN DRUG STORES' REQUEST FOR CLARIFICATION ON COVID-19 AND FLU VACCINE COMMUNICATIONS UNDER THE TELEPHONE CONSUMER PROTECTION ACT

CG Docket No. 02-278

Comment Date: September 25, 2020

Reply Comment Date: October 2, 2020

With this Public Notice, we seek comment on a request for clarification filed by the National Association of Chain Drug Stores (NACDS).¹ Specifically, the NACDS requests clarification that communications from pharmacies related to COVID-19 vaccines, once available, and flu vaccines during the pandemic fall within the Telephone Consumer Protection Act's "emergency purposes" exception to the statute's prior express consent requirement.² NACDS argues such communications fall within the emergency purposes exception because they are "solely informational, made necessary because of the COVID-19 outbreak, and directly related to the imminent health or safety risk arising out of the COVID-19 outbreak."³

We seek comment on these and any other issues raised by this request.

Pursuant to section 1.2 of the Commission's rules,⁴ interested parties may file comments and reply comments on or before the dates indicated above. 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://apps.fcc.gov/ecfs/>.

¹ See Letter from Steven C. Anderson on behalf of the National Association of Chain Drug Stores to Richard Smith, Federal Communications Commission (Aug. 17, 2020) (filed in CG Docket No. 02-278), <https://ecfsapi.fcc.gov/file/10817526812618/NACDS%20Letter%20to%20CGB%20re%20COVID-19%20Declaratory%20Ruling.pdf> (NACDS Letter). In this letter, NACDS indicates that it "seeks clarification." We, therefore, construe this request as a petition for clarification or, in the alternative, declaratory ruling under section 1.2 of the Commission's rules, 47 CFR § 1.2.

² NACDS Letter at 2. NACDS contends that such a ruling is consistent with the guidance provided in a recent declaratory ruling (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling, 35 FCC Rcd 2840 (CGB 2020) (*COVID-19 Ruling*)).

³ NACDS Letter at 3 (quoting *COVID-19 Ruling*, 35 FCC Rcd at 2841, para. 7).

⁴ 47 CFR § 1.2.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent 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.
- 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.
- **Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.**

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).

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁵ 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.⁶ 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).⁷ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information, contact Richard D. Smith, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (717) 338-2797 or Richard.Smith@fcc.gov.

⁵ See 47 CFR §§ 1.1200 *et seq.*

⁶ *Id.* § 1.1206(b).

⁷ *Id.* § 1.49(f).