



# PUBLIC NOTICE

Federal Communications Commission  
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DA 22-487

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## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON REQUEST RELATING TO ENROLLMENT IN MEDICAID AND OTHER GOVERNMENTAL HEALTH COVERAGE PROGRAMS

CG Docket No. 02-278

Comments Due: May 17, 2022

Reply Comments Due: May 24, 2022

With this Public Notice, we seek comment on a request filed by the U.S. Department of Health and Human Services (HHS) seeking clarification that certain automated calls and text messages or prerecorded voice calls relating to enrollment in state Medicaid and other governmental health coverage programs are permissible under the Telephone Consumer Protect Act (TCPA).<sup>1</sup> First, HHS contends that the provision of a telephone number upon application for eligibility in a health care program constitutes prior express consent to be contacted at that telephone number regarding eligibility for and enrollment in the program.<sup>2</sup> Second, HHS contends that, because federal and state agencies are so involved in placing these calls by determining the content, timing, and recipient of the call or text message, that the federal and state government is the maker of the call under the TCPA even if a third party is involved in facilitating the call.<sup>3</sup>

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

*Filing Requirements.* Interested parties may file comments on or before the dates indicated above.<sup>4</sup> All filings must reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>5</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing.

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<sup>1</sup> See Letter from Xavier Becerra, Secretary, U.S. Department of Health and Human Services, to Jessica Rosenworcel, Chairwoman, FCC (April 28, 2022) (filed in CG Docket No. 02-278) (noting that millions of Americans will lose their Medicaid coverage when the public health emergency ends unless they take steps to renew eligibility) (HHS Letter), <https://www.fcc.gov/ecfs/search/search-filings/filing/10429695829926>.

<sup>2</sup> HHS Letter at 8.

<sup>3</sup> *Id.* at 8-9 (noting that the Commission has clarified that federal and state governmental callers are not considered "persons" that are subject to the TCPA).

<sup>4</sup> See 47 CFR §§ 1.1, 1.49.

<sup>5</sup> *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- 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.
- Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission’s office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.<sup>6</sup>
- 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 may be addressed to 45 L Street, NE, Washington, DC 20554.

*Ex Parte Rules.* The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>7</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 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.

*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 Bureau at 202-418-0530 (voice).

*Additional Information.* For further information regarding this Public Notice, please contact Richard D. Smith, Consumer and Governmental Affairs Bureau, at 717-338-2797 or by e-mail at [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov).

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<sup>6</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>7</sup> 47 CFR §§ 1.1200 *et seq.*