PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 14-1398
September 26, 2014

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

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

Comment Date: **October 10, 2014**
Reply Comment Date: **October 17**, **2014**

On September 18, 2014, Power Liens, LLC (Petitioner) filed a petition seeking a declaratory ruling and/or waiver concerning section 64.1200(a)(4)(iv) of the Commission's rules, which requires fax ads sent to a consumer who has provided prior express invitation or permission to include an opt-out notice.[1] With this Public Notice, we seek comment on the Petition as described below.

The Petitioner contends that section 64.1200(a)(4)(iv) should not apply to faxes sent with the "prior express invitation or permission" of the recipient because the Commission lacks authority to regulate "solicited" faxes.[2] As a result, the Petitioner seeks a declaratory ruling that section 64.1200(a)(4)(iv) does not apply to faxes sent with prior express invitation or permission.[3] The Petitioner also alleges confusion was created regarding the applicability of the rule by language contained in a footnote to the Commission's 2006 order adopting the rule.[4] In addition, the Petitioner argues that regulation of solicited faxes raises First Amendment concerns.[5] Alternatively, the Petitioner requests that the Commission clarify that the opt-out notice requirements imposed on solicited faxes were not promulgated under section 227(b) of the Communications Act, as amended.[6] Should the Commission decline the request for declaratory ruling, the Petitioner seeks a retroactive waiver of the opt-out notice

---

[1] *See Petition of Power Liens, LLC for Declaratory Ruling and/or Waiver*, CG Docket Nos. 02-278, 05-338 (filed Sept. 18, 2014) (Petition); *see also* 47 C.F.R. § 64.1200 (a)(4)(iv).

[2] Petition at 3-5, 9.

[3] *Id.* at 7.

[4] *Id.* at 8-9.

[5] *Id*. at 10-11.

[6] *Id*. at 11-13.

requirement for fax ads sent where prior express invitation or permission has been obtained from the recipient.[7]

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 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 ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- 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 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 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.

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).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[8] 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

---

[7] *Id*. at 13-15 (contending that "strict compliance with Section 64.1200(a)(4)(iv) with respect to faxes sent by Power Liens with the recipients' consent would be inequitable, unduly burdensome, and contrary to the public interest").

[8] 47 C.F.R. §§ 1.1200 *et seq*.

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.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797; or Richard.Smith@fcc.gov.

-FCC-