PUBLIC NOTICE

Federal Communications Commission
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December 30, 2014

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

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

Comment Date: **January 13, 2015**
Reply Comment Date: **January 20**, **2015**

Eleven petitions have been filed seeking a waiver of section 64.1200(a)(4)(iv) of the Commission's rules, which requires that an opt-out notice containing certain information[1] be included in fax ads sent to a consumer who has provided prior express invitation or permission.[2] With this Public Notice, we seek comment on the Petitions as described below.

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[1] 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 C.F.R. § 64.1200 (a)(4)(iii)-(iv).

[2] *See Petition of McKesson Corporation for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Nov. 25, 2014) (McKesson Petition); *Petition of American Association for Justice for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Nov. 28, 2014) (AAJ Petition); *Petition of Sunwing Airlines Inc., Vacation Express USA Corp., and Sunwing Vacations Inc. for Retroactive Waiver*, CG Docket No. 05-338 (filed Nov. 28, 2014) (Sunwing Petition); *Petition of ZocDoc Inc. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Dec. 4, 2014) (ZocDoc Petition); *Petition of J.L. Barnes Insurance Agency, Inc. d/b/a JLBG Health for Retroactive Waiver*, CG Docket Nos. 02-278, 05-338 (filed Dec. 5, 2014) (JLBG Petition); *Petition of St. Luke's Center for Diagnostic Imaging, LLC for Retroactive Waiver*, CG Docket No. 05-338 (filed Dec. 8, 2014) (St. Luke Petition); *Petition of CDI Open MRI of Missouri, LLC for Retroactive Waiver*, CG Docket No. 05-338 (filed Dec. 8, 2014) (CDI Petition); *Petition of Senco Brands, Inc. for Waiver*, CG Docket No. 05-338 (filed Dec. 11, 2014) (Senco Petition); *Petition of EatStreet, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Dec. 12, 2014) (EatStreet Petition); *Petition of Henry Schein, Inc. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Dec. 17, 2014) (Schein Petition); *Petition of Philadelphia Consolidated Holding Corp. et al. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Dec. 19, 2014) (PCH Petition); (collectively Petitioners).

Specifically, the Petitioners seek retroactive waivers of the opt-out notice requirement for fax ads they sent where prior express invitation or permission allegedly had been obtained from the recipient.[3] The Petitioners argue that good cause exists because they are similarly situated to parties who were granted retroactive waivers from this requirement by the Commission in the recent *Anda Order*.[4] In the *Anda Order*, the Commission granted retroactive waivers to several individual petitioners because of uncertainty about whether the opt-out notice 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. We therefore seek comment on the Petitioners' requests for waiver consistent with the guidance set forth in the *Anda Order*.

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).

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[3] *See* AAJ Petition at 3-4; CDI Petition at 5-8; EatStreet Petition at 4-6; JLBG Petition at 3-4; McKesson Petition at 3-4; PCH Petition at 4-7; Schein Petition at 3-5; Senco Petition at 5-7; St. Luke Petition at 5-7; Sunwing Petition at 5-6; ZocDoc Petition at 3-4.

[4] *See, e.g.,* AAJ Petition at 3; CDI Petition at 7; EatStreet Petition at 3-4; JLBG Petition at 3; McKesson Petition at 4; PCH Petition at 5; Schein Petition at 3; St. Luke Petition at 7; Sunwing Petition at 5; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; 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, Order, FCC 14-164, paras. 22-31 (rel. Oct. 30, 2014) (*Anda Order*).

[5] *Anda Order* at paras. 22-30.

[6] *Anda Order* at para. 22.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[7] 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.

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

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[7] 47 C.F.R. §§ 1.1200 *et seq*.