



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR RETROACTIVE WAIVER FILED BY RITA'S WATER ICE FRANCHISE COMPANY, LLC

CG Docket No. 02-278

Comment Date: January 13, 2016

Reply Comment Date: January 28, 2016

With this Public Notice, we seek comment on a petition for waiver filed by Rita's Water Ice Franchise Company, LLC, (Rita's Water Ice)¹ requesting a retroactive and prospective waiver of the Commission's prior-express-written-consent requirement for automated telemarketing calls like the waiver granted recently to parties who, Rita's Water Ice states, are similarly situated.²

In 2012, the Commission adopted rules pursuant to the Telephone Consumer Protection Act (TCPA)³ that 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.⁴

In support of its request, Rita's Water Ice asserts that good cause exists for such a waiver because special circumstances warrant deviation from the general rule, including that: it is similarly situated to the parties who received a retroactive and prospective waiver of the written consent requirement and,

¹ Petition for Retroactive Waiver filed by Rita's Water Ice, CG Docket No. 02-278, at 1 (filed on Dec. 2, 2015) (*Petition*). Rita's Water Ice states that it is "the franchisor of the Rita's Ice-Custard-Happiness chain of Italian ice and custard shops, which includes approximately 600 franchised locations throughout the United States." *Id.* at 1. Rita's Water Ice describes a service it offered its customers in the past, allowing them to receive text alerts when their favorite flavors were available at their local Rita's location. "Customers who wished to receive these alerts were required to provide express written consent, including providing their phone numbers. . . ." *Id.* at 1, 5-6.

² 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 *TCPA Order*).

³ The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 CFR § 64.1200.

⁴ 47 CFR § 64.1200(a)(2), (3).

therefore, should equitably receive the same treatment;⁵ it faced the same confusion regarding the implementation of this written consent requirement as the parties to whom the Commission previously granted such a waiver;⁶ and the grant of its request is warranted and would serve the public interest.⁷

We seek comment on these and any other issues raised in the *Petition*.

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 the 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 Street, 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 & 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

⁵ *Petition* at 2, 6.

⁶ *Id.* at 7.

⁷ *Id.*

⁸ 47 CFR §§ 1.1200 *et seq.*

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: Christina Clearwater, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1893; Christina.Clearwater@fcc.gov.

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