PUBLIC NOTICE

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PAUL D. S. EDWARDS'S PETITION FOR AN EXPEDITED CLARIFICATION AND DECLARATORY RULING CONCERNING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) RULES

CG Docket No. 02-278

Comments Due: 15 Days After Publication in the Federal Register
Reply Comments Due: 25 Days After Publication in the Federal Register

On January 12, 2009, Paul D. S. Edwards (Edwards) filed a petition for an expedited clarification and declaratory ruling regarding the Commission's rules under the Telephone Consumer Protection Act (TCPA).[1] Specifically, Edwards asks the Commission to clarify whether a creditor may place autodialed or prerecorded message calls to a telephone number associated with wireless service that was provided to the creditor initially as a telephone number associated with landline service.[2] Section 64.1200(a)(1)(iii) of the Commission's rules prohibits the initiation of "any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, to any telephone number assigned to . . . cellular telephone service. . . ."[3] The Commission concluded that such calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party.[4]

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[1] *See* Petition for Expedited Clarification, filed by Paul D.S. Edwards, January 12, 2009 (*Petition*).

[2] *Petition* at 3 (*citing Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 and Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 23 FCC Rcd 559 (2008) (*ACA International*)).

[3] 47 C.F.R. § 64.1200(a)(1)(iii). The Commission's rules on autodialed and prerecorded message calls to cell phone numbers incorporated the language of the TCPA virtually verbatim. *See also* 47 U.S.C. § 227(b)(1)(A)(iii) ("It shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States—to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call[.]")

[4] *See ACA International*, 23 FCC Rcd 559.

Edwards asserts that the Commission's ruling permits debt collection calls to a wireless telephone number only when the consumer, in that instance, provides the wireless telephone number to the creditor.[5] Edwards contends that when the creditor is initially provided a "landline" telephone number, and subsequently that "landline" number is ported to a cellular telephone, an established business relationship, "prior express consent," or other exemption from section 227(b)(1)(A)(iii) of the TCPA is not created.[6] Edwards concludes that compliance with the TCPA requires that the consumer must have provided the creditor a telephone number assigned to a wireless service in order for calls to the wireless telephone number to be permissible.[7] Accordingly, we seek comment on Edwards's petition.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on Edwards's *Petition* on or before the 15th day after publication of this Public Notice in the Federal Register, and reply comments may be filed on or before the 25th day after publication of this Public Notice in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number (CG Docket No. 02-278). Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

Unless otherwise provided, requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the potential impact of this proceeding on persons not parties to the *Petition*, this proceeding shall be treated as a permit-but-disclose proceeding under the *ex parte* rules, which are codified at 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, *ex parte* presentations

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[5] *Petition* at 2.

[6] *Id. See also* 47 U.S.C. §227(b)(1)(A)(iii).

[7] *Petition* at 2.

will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Karen Johnson, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-7706 (voice), Karen.Johnson@fcc.gov.

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