



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR FORBEARANCE FROM THE DIRECT MARKETING ASSOCIATION

CG Docket No. 02-278

Comment Date: December 2, 2013

Reply Comment Date: December 17, 2013

With this Public Notice, we seek comment on a Petition for Forbearance filed by the Direct Marketing Association (DMA).¹ The Commission, in a February 2012 Report and Order, amended its Telephone Consumer Protection Act (TCPA)² rules effective October 16, 2013, to, among other things, require prior express written consent that meets specified standards for certain autodialed or prerecorded telemarketing calls.³ In its Petition for Forbearance, the DMA states that “[the new rules] require disclosure, informing consumers, that sales are not conditioned on consent and that the seller is using an automatic telephone dialing system (“autodialer”), in connection with marketers[’] existing written consent agreements.”⁴ The DMA argues that, while the Commission “stated that its primary goal in revising [these TCPA rules] was to make [its rules] consistent with those of the Federal Trade Commission (FTC),”⁵ this new rule departs from the FTC’s formulation.⁶ The DMA maintains that the Commission’s rule “requires that a marketer affirmatively **disclose** to its customer that it is not acting to condition sale on the written agreement.”⁷ The DMA asserts that reliance on previously obtained

¹ See *Direct Marketing Association*, Petition for Forbearance, CG Docket No. 02-278 (filed Oct. 17, 2013) (asking the Commission to forbear from enforcing the disclosure requirements of 47 C.F.R. § 64.1200(f)(8)(i)(A) and (B), which became effective Oct. 16, 2013). Although this filing is captioned as a “Petition for Forbearance,” we note that it does not cite or refer to the Commission’s “section 10” regulatory forbearance authority, see 47 U.S.C. § 160, which specifically concerns forbearance from applying provisions of the Communications Act or the Commission’s rules to telecommunications carriers or services. Because the DMA Petition appears to seek a more general form of relief, we will not treat it as a “section 10” forbearance request. We invite comment on what form of relief, if any, may be warranted in response to the DMA Petition.

² Codified as 47 U.S.C. § 227.

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830 (2012); 47 C.F.R. § 64.1200.

⁴ *Petition* at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 5.

⁷ *Id.* at 4 (emphasis in original).

consents that fail to make the disclosures specified in sections 64.1200(f)(8)(i)(A) and (B) of the Commission's rules⁸ would expose marketers to regulatory sanctions and lawsuits for failure to make the specified disclosure, "even though the previously obtained consent otherwise complies with the written consent requirements [in section 64.1200(f)(8)] and does not violate the FTC companion rule."⁹ Therefore, the DMA asks the Commission to forbear from enforcing, in regard to existing written agreements, sections 64.1200(f)(8)(i)(A) and (B).¹⁰

Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹¹ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice. 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 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.¹² Persons making *ex parte* presentations must file a

⁸ 47 C.F.R. § 64.1200(f)(8)(i)(A) and (B).

⁹ *Petition* at 4.

¹⁰ *Id.* at 3-4.

¹¹ 47 C.F.R. §§ 1.415, 1.419.

¹² 47 C.F.R. §§ 1.1200 *et seq.*

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: Kristi Lemoine, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202-418-2467, and kristi.lemoine@fcc.gov.

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