



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 14-923
June 27, 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: July 11, 2014
Reply Comment Date: July 18, 2014

On June 6, 2014, Stericycle, Inc. (Petitioner) filed a petition for declaratory ruling and/or waiver concerning section 64.1200(a)(4)(iv) of the Commission's rules, which requires fax advertisements 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 this petition as described below.

The Petitioner seeks a declaratory ruling clarifying that section 64.1200(a)(4)(iv) does not apply to faxes sent with express permission because it contends Congress did not grant the Commission authority to regulate solicited faxes.² In addition, the Petitioner argues that regulation of solicited faxes raises substantial First Amendment concerns.³ Alternatively, the petitioners request that the Commission clarify that the statutory basis for this rule is not section 227(b) of the Communications Act, as amended.⁴ Should the Commission decline these requests for declaratory ruling, the Petitioner seeks a retroactive waiver of the opt-out notice requirement for fax advertisements sent where prior express consent has been obtained from the recipient.⁵

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

¹ See *Petition of Stericycle, Inc. for Declaratory Ruling and/or Waiver Regarding 47 C.F.R. § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed June 6, 2014) (Petition).

² See Petition at 13-14; *id.* at 12 (arguing that the rule is "confusing at best and certainly can be interpreted multiple ways by well-informed people").

³ *Id.* at 14.

⁴ *Id.* at 15.

⁵ *Id.* at 16.

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.⁶ 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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⁶ 47 C.F.R. §§ 1.1200 *et seq.*