



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 14-1122
Released: August 1, 2014

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR EXPEDITED DECLARATORY RULING FILED BY SANTANDER CONSUMER USA, INC.

CG Docket No. 02-278

Comment Date: September 2, 2014
Reply Comment Date: September 15, 2014

On July 10, 2014, Santander Consumer USA, Inc. (Santander) filed a petition for declaratory ruling requesting that the Commission clarify certain aspects of the Telephone Consumer Protection Act (TCPA).¹ Specifically, Santander asks the Commission to “clarify and confirm that ‘prior express consent’ to receive non-telemarketing calls and text messages to cellular telephones sent using an automatic telephone dialing system (‘ATDS’) and/or an artificial or prerecorded voice message cannot be revoked.”² If the Commission determines that the TCPA includes the right to revoke “prior express consent” to receive such non-telemarketing communications, Santander then asks in the alternative that the Commission clarify that the caller may require consumers to use one or more of the following methods to effectively revoke “prior express consent”: (1) in writing at the mailing address designated by the caller; (2) by email to the email address designated by the caller; (3) by text message sent to the telephone number designated by the caller; (4) by facsimile to the telephone number designated by the caller; and/or (5) as prescribed by the Commission hereafter as needed to address emerging technology.³

The TCPA and Commission rules prohibit autodialed or prerecorded non-emergency calls to cellular telephone numbers without the prior express consent of the called party.⁴ Santander argues that neither the TCPA nor the Commission’s prior rulings explicitly provide a right to revoke “prior express consent” and that the lack of such an explicit statement means that consumers have no right to revoke prior express consent to receive non-telemarketing calls.⁵ Santander asserts that the rising tide of TCPA

¹ *Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, filed by Santander Consumer USA, Inc. on July 10, 2014 (*Petition*). The TCPA is codified as 47 U.S.C. § 227.

² *Petition* at 1.

³ *Petition* at 1, 9-14. Elsewhere in its petition, Santander states its request differently by asking the Commission to establish a requirement that consumers use one or more of these methods to revoke prior express consent. *Id.* at 4.

⁴ 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

⁵ *See, e.g., Petition* at 7-8.

litigation and inconsistent court decisions on this issue demonstrate the need for clarification.⁶ 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.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

⁶ *Id.* at 4, 9-15.

⁷ 47 C.F.R. §§ 1.1200 *et seq.*

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: B. Lynn Follansbee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1514; lynn.follansbee@fcc.gov.

-FCC-