



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR EXPEDITED DECLARATORY RULING AND EXEMPTION FROM AMERICAN ASSOCIATION OF HEALTHCARE ADMINISTRATIVE MANAGEMENT

CG Docket No. 02-278

Comment Date: January 16, 2015

Reply Comment Date: February 2, 2015

With this Public Notice, we seek comment on the Petition for Expedited Declaratory Ruling and Exemption filed by the American Association of Healthcare Administrative Management (AAHAM).¹ AAHAM is concerned with the applicability of the Telephone Consumer Protection Act (TCPA)² and the Commission's rules³ to certain calls placed by or on behalf of healthcare providers.⁴ The TCPA and the Commission's rules require the prior express consent of the called party to place autodialed or artificial or prerecorded voice calls to wireless numbers⁵ and to place telemarketing calls using artificial or prerecorded voice to residential telephone numbers.⁶ The Commission's rules also contain an exemption for certain calls subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule.⁷ AAHAM asks the Commission to confirm that "the provision of a telephone number by an individual to a healthcare provider constitutes 'prior express consent' for non-telemarketing, healthcare calls to that telephone number by or on behalf of the healthcare provider."⁸ As part of this request for

¹ See *American Association of Healthcare Administrative Management*, Petition for Expedited Declaratory Ruling and Exemption, CG Docket No. 02-278 (filed Oct. 21, 2014) (*Petition*).

² Codified as 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

⁴ *Petition* at 1. AAHAM is concerned with certain calls placed by or on behalf of healthcare providers, including "hospitals, emergency care centers, medical physician or service offices, poison control centers, and other healthcare professionals." *Id.* at 1 n.4.

⁵ 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1), (2).

⁶ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(3).

⁷ The Commission has implemented different rules for HIPAA exemptions for calls to residential numbers and wireless numbers. HIPAA calls using an artificial or prerecorded voice to a residential number are exempt from the consent requirement. See 47 C.F.R. § 64.1200(a)(3)(v). HIPAA-covered autodialed or prerecorded calls to a wireless number are exempt from the written consent requirement. See 47 C.F.R. § 64.1200(a)(2). These calls are still covered by the general consent requirement in 64.1200(a)(1).

⁸ *Petition* at 1-2.

clarification, AAHAM asks the Commission to confirm that provision of a telephone number to a healthcare provider constitutes prior express consent for calls “by or on behalf of the ‘covered entity’ as well as its ‘business associates.’”⁹

AAHAM also asks that the Commission “exempt from the TCPA’s ‘prior express consent’ requirement certain non-telemarketing, healthcare calls when they are ‘not charged to the called party.’”¹⁰ The TCPA permits the Commission to exempt from the prior-express-consent requirement autodialed or prerecorded calls to a wireless telephone number that are not charged to the called party, “subject to such conditions as the Commission may prescribe” to protect consumer privacy.¹¹

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,¹² 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.

⁹ *Id.* at 2 n.6. AAHAM presents this request for clarification in regard to healthcare calls subject to HIPAA protections. *Id.*

¹⁰ *Petition* at 2.

¹¹ 47 U.S.C. § 227(b)(2)(C); *see also Cargo Airline Association Petition for Expedited Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 29 FCC Rcd 3432 (2014); *Erratum*, 29 FCC Rcd 5056 (CGB 2014) (in the first use of this authority, granting a limited exemption, subject to certain conditions, for package delivery notifications sent to mobile devices).

¹² 47 C.F.R. §§ 1.415, 1.419.

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.¹³ 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: Christina Clearwater, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-1893; Christina.Clearwater@fcc.gov.

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¹³ 47 C.F.R. §§ 1.1200 *et seq.*