



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON MOBILE MEDIA TECHNOLOGIES PETITION FOR DECLARATORY RULING OR RETROACTIVE WAIVER

CG Docket No. 02-278

Comment Date: May 27, 2016
Reply Comment Date: June 13, 2016

On April 5, 2016, Mobile Media Technologies (Mobile Media) filed a petition for declaratory ruling or retroactive waiver requesting clarification that neither the Telephone Consumer Protection Act (TCPA) nor the Commission's rulings require a party transmitting a text message to create or make available a specific method by which a consumer may revoke prior express consent to be sent text messages.¹ Mobile Media also requests confirmation that a "reasonable method" of revoking consent, which the Commission has defined as one that "clearly expresses a desire not to receive further messages," must, at a minimum, be a method that reaches the texting party.² Alternatively, Mobile Media seeks a retroactive waiver from any requirement that a texting party must provide a two-way texting functionality as a method to revoke prior express consent.³

Mobile Media states that it provides a service used by its clients to transmit non-commercial text alerts to the cell phones of consumers who have affirmatively consented to receiving those messages.⁴ Mobile Media acknowledges that its text subscribers may change or cancel their consent at any time.⁵

¹ See *Petition of Mobile Media Technologies for Declaratory Ruling or, In the Alternative Retroactive Waiver*, CG Docket No. 02-278, WC Docket No. 07-135 (filed April 5, 2016), <http://apps.fcc.gov/ecfs/comment/view?id=60001535577> (Petition). The TCPA, *inter alia*, requires prior express consent before making an autodialed call to a wireless telephone number, unless the call is for an emergency purpose or solely for the purpose of collecting a debt owed to or guaranteed by the United States. 47 U.S.C. § 227(b)(1)(A).

² Petition at 14, 16.

³ *Id.* at 17-18.

⁴ *Id.* at 6.

⁵ *Id.*

While it does not require any particular or exclusive means of communication to revoke consent, it states that its subscribers can revoke consent from the same sign-up page used to obtain consent or by communicating their revocation of consent to a client by any reasonable means of the subscriber's choice.⁶ Mobile Media further states that prior to late 2015, however, text recipients could not communicate revocation of consent by a reply text message, such as replying "STOP," because the system utilized a message protocol not designed to facilitate "bilateral" (reply) text messaging.⁷ According to Mobile Media, the system since has been modified to allow reply messages to be received and reviewed for indicia of revocation⁸ and claims have been filed against Mobile Media's clients alleging that replying "STOP" is a reasonable method of revocation that Mobile Media's clients were required to accept regardless of whether the messages ever were received.⁹ We seek comment on these and other issues raised by 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 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).

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰ Persons making *ex parte* presentations must file a copy of any written

⁶ *Id.* at 6-7 (indicating that requests to revoke consent can be made, for example, by phone, mail, or email).

⁷ *Id.* at 7.

⁸ *Id.* at 10.

⁹ *Id.*

¹⁰ 47 CFR §§ 1.1200 *et seq.*

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 (voice) or Richard.Smith@fcc.gov.

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