



PUBLIC NOTICE

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

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

DA 17-144

Released: February 8, 2017

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR RULEMAKING AND DECLARATORY RULING REGARDING PRIOR EXPRESS CONSENT UNDER THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

CG Docket No. 02-278
CG Docket No. 05-338

Comment Date: March 10, 2017

Reply Comment Date: March 27, 2017

With this Public Notice, we seek comment on a petition for rulemaking and declaratory ruling filed by Craig Moskowitz and Craig Cunningham (Petitioners).¹ Petitioners request that the Commission initiate a rulemaking “to overturn the Commission’s improper interpretation that ‘prior express consent’ includes implied consent resulting from a party’s providing a telephone number to the caller.”² Specifically, Petitioners request that the Commission issue a rule requiring that for all calls made to wireless and residential lines subject to the Telephone Consumer Protection Act (TCPA) restrictions in 47 U.S.C. § 227(b)(1)(A)(iii) and 47 U.S.C. § 227(b)(1)(B),³ “prior express consent” must be express consent specifically to receive autodialed and/or artificial voice/prerecorded telephone calls at a specified number, and such consent must be in writing.⁴ In addition, Petitioners seek a declaratory ruling to remove uncertainty regarding the meaning of “prior express consent” resulting from previous Commission orders.⁵

¹ Petition of Craig Moskowitz and Craig Cunningham for Rulemaking and Declaratory Ruling, CG Docket Nos. 02-278, 05-338 (filed Jan. 22, 2017) (*Petition*).

² *Id.* at 2.

³ The TCPA is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 C.F.R. § 64.1200. Among other things, the TCPA and/or the related rules prohibit any call to a cell phone using any automatic telephone dialing system or an artificial or prerecorded voice other than a call: made for emergency purposes; made with the prior express consent of the called party; or made solely to collect a debt owed to or guaranteed by the United States. 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)-(2). The TCPA and/or the rules also prohibit any call to a residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call: is for emergency purposes; is not made for a commercial purpose; is made for a commercial purpose but does not include transmission of any unsolicited advertisement; is made by or on behalf of a tax-exempt nonprofit organization; delivers a “health care” message as described in the rule; or is made solely to collect a debt owed to or guaranteed by the United States. 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

⁴ *Petition* at 2.

⁵ *Id.*

We seek comment on these and any other issues raised by the *Petition*.

Comments and Reply Comments. Pursuant to sections 1.2 and 1.405 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.⁶ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the website for submitting comments.
- **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 or 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.

Comments and reply comments filed in response to this Public Notice will be available via ECFS. These documents also will be available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554.

Accessibility Information. 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).

Ex Parte Rules. This proceeding 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

⁶ 47 CFR §§ 1.2, 1.405.

⁷ See 47 CFR §§ 1.1200 *et seq.*

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 section 1.1206(b) of the Commission's rules.⁸ In proceedings governed by section 1.49(f) of the rules 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).⁹ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information, contact Kimberly A. Wild of the Consumer and Governmental Affairs Bureau, at (202) 418-1324 or Kimberly.Wild@fcc.gov.

-- FCC --

⁸ 47 CFR § 1.1206(b).

⁹ 47 CFR § 1.49(f).