



PUBLIC NOTICE

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DA 06-808

Released: April 5, 2006

**CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
ACA INTERNATIONAL'S PETITION FOR AN EXPEDITED CLARIFICATION
AND DECLARATORY RULING CONCERNING THE TELEPHONE
CONSUMER PROTECTION ACT (TCPA) RULES**

CG Docket No. 02-278

Comments Due: 15 Days After Publication in the Federal Register

Reply Comments Due: 25 Days After Publication in the Federal Register

On October 4, 2005, ACA International (ACA)¹ filed a petition for expedited declaratory ruling seeking clarification of the rules under the Telephone Consumer Protection Act (TCPA).² Specifically, ACA asks the Commission to clarify that 47 C.F.R. § 64.1200(a)(1)(iii) does not apply to creditors and collectors when calling telephone numbers to recover payments for goods and services received by consumers.³ Section 64.1200(a)(1)(iii) of the Commission's rules prohibit the initiation of "any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, to any telephone number assigned to . . . cellular telephone service. . . ."⁴

¹ ACA International describes itself as an international trade organization of credit and collection companies that provide a wide variety of accounts receivable management services. ACA represents approximately 5,800 company members ranging from credit grantors, collection agencies, attorneys, and vendor affiliates.

² See Petition for Expedited Declaratory Ruling, filed by ACA, October 4, 2005 (*Petition*).

³ See *Petition* at 2.

⁴ 47 C.F.R. § 64.1200(a)(1)(iii). The Commission's rules on autodialed and prerecorded message calls to cell phone numbers incorporated the language of the TCPA virtually verbatim. See also 47 U.S.C. § 227(b)(1)(iii) ("It shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States—to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call[.]")

ACA maintains that autodialed telephone calls are the most efficient way to contact customers. ACA indicates that creditors use autodialers not for telemarketing purposes, but to recover payments for obligations owed to creditors.⁵ According to ACA, the calls do not involve advertising or soliciting the sale of products or services; instead, they are placed to “complete a transaction” in which the customer has received a product or service.⁶ ACA also suggests that many customers today use wireless phones as their primary or preferred method of contact, and that wireless telephone numbers are typically provided by the customers—as part of a credit application, for example—for purposes of receiving calls.⁷

In addition, ACA argues that Congress did not intend the TCPA’s autodialer restriction to cover calls by or on behalf of creditors when attempting to recover payments.⁸ According to ACA, in a 2003 Report and Order revising the TCPA rules, the Commission concluded that a predictive dialer is within the meaning and statutory definition of automatic telephone dialing equipment.⁹ ACA believes this conclusion has created uncertainty for creditors using predictive dialers to call wireless phone numbers. Without clarification that creditors’ calls are not subject to the restrictions on autodialed calls to wireless numbers, ACA maintains the credit and collections industry will suffer severe economic harm based on the inability to use autodialers to make such calls.¹⁰ Accordingly, we seek comment on ACA’s petition.

Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on ACA’s *Petition* on or before the 15th day after publication of this Public Notice in the Federal Register, and reply comments may be filed on or before the 25th day after publication of this Public Notice in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number (CG Docket No. 02-278). Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in

⁵ *Petition* at 5.

⁶ *Petition* at 5-6.

⁷ *Petition* at 5.

⁸ *Petition* at 12 (arguing that “Congress enacted the TCPA to curtail the onslaught of telemarketing calls invading the privacy of American homes where there was neither an existing business relationship between the caller and the called party nor the express consent of the called party to a telephone solicitation or advertisement”).

⁹ *Petition* at 9 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003)).

¹⁰ *Petition* at 10.

receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

Unless otherwise provided, requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the potential impact of this proceeding on persons not parties to the *Petition*, this proceeding shall be treated as a permit-but-disclose proceeding under the *ex parte* rules, which are codified at 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, *ex parte* presentations will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-0346 (voice), Erica.McMahon@fcc.gov.

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