



PUBLIC NOTICE

Federal Communications Commission
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DA 14-416
March 28, 2014

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CROWN MORTGAGE COMPANY PETITION CONCERNING THE COMMISSION'S RULE ON OPT-OUT NOTICES ON FAX ADVERTISEMENTS

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

Comment Date: April 11, 2014
Reply Comment Date: April 18, 2014

On February 24, 2014, Crown Mortgage Company (Crown) filed a petition seeking a declaratory ruling and/or waiver concerning section 64.1200(a)(4)(iv) of the Commission's rules, which requires fax advertisements sent to a consumer who has provided prior express invitation or permission to include an opt-out notice.¹ With this Public Notice, we seek comment on this petition as described below.

Crown seeks a declaratory ruling clarifying that section 64.1200(a)(4)(iv) of the Commission's rules does not apply to fax advertisements sent with the prior express consent or permission of the recipient because such faxes constitute "solicited" faxes that Crown contends are not required to include opt-out notices.² Specifically, Crown argues that application of the opt-out requirements to solicited faxes exceeds the Commission's statutory authority and violates the First Amendment.³ Alternatively, Crown requests that the Commission clarify that the statutory basis for this rule is not section 227 of the Communications Act, as amended.⁴ Should the Commission decline its request for declaratory ruling, Crown seeks a retroactive waiver for fax advertisements sent where prior express consent has been obtained from the recipient.⁵ In support of this request, Crown contends that strict compliance with

¹ See *Petition of Crown Mortgage Company for Declaratory Ruling and/or Waiver of the "Opt Out" Requirement*, CG Docket Nos. 02-278, 05-338 (filed Feb. 24, 2014) (Crown Petition); see also 47 C.F.R. § 64.1200(a)(4)(iv).

² *Id.* at 11-14.

³ *Id.* at 11-16.

⁴ *Id.* at 16-17.

⁵ *Id.* at 17-20.

section 64.1200(a)(4)(iv) with respect to solicited faxes would be “inequitable, unduly burdensome, and contrary to the public interest.”⁶

We note that the Commission has recently sought comment on several related petitions that raise similar issues to those set forth in the Crown Petition.⁷ As a result, commenters need not refile comments already submitted in response to that Public Notice for consideration in this matter.

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).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸ 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 *Id.* at 19.

⁷ *See* Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission’s Rule on Opt-Out Notices on Fax Advertisements, CG Docket Nos. 02-278, 05-338, Public Notice, DA 14-120 (rel. Jan. 14, 2014).

⁸ 47 C.F.R. §§ 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 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; or Richard.Smith@fcc.gov.

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