

# The CommLaw Group - Telephone Consumer Protection Act ("TCPA") Compliance Monitor

**TCPA Compliance Monitor**

Update: February 2018

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| <b>Total Pending Petitions Filed:</b> | 56 |
| <b>New Petitions:</b>                 | 2  |
| <b>Existing Pending Petitions:</b>    | 54 |
| <b>Decisions Released:</b>            | 0  |

| <b>New Petitions:</b>   |   |   |   |  |
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| <b>Filer</b>  | <b>Title; Filing Date; Docket No.</b>   | <b>Public Notice</b>  | <b>Summary</b>  | <b>Primary Issue</b>                             |
| Federal Housing Finance Agency  | Petition fo Clarification or, in the Alternative, Declaratory Ruling; Nov. 15, 2017; 02-278 | Released: Nov. 17, 2017; Comments Due: Dec. 1, 2017; Reply Comments Due: Dec. 8, 2017 | The Federal Housing Finance Agency ("FHFA") asks the Commission to clarify that calls made by mortgage holrds to borrowers in disaster-affected areas fit within the scope of prior express consent if the borrower previously provided the mortgage holder with the phone number.  | Scope of Prior Express Consent                   |
| The Insights Association and The American Association for Public Opinion Research | Petition for Declaratory Ruling; October 30, 2017; 02-278                                   |   | The petitioners argue a number of court have misread the TCPA with respect to its application to market research, opinion, and survey calls. Therefore, petitioners ask the FCC to clarify that messages sent by for-profit companies are not presumptively advertisements or telemarketing; 2) ancillary documents or webpages do not convert non-commercial messages into dual-purpose messages; 3) survey, opinion, and market research firms are not subject to vicarious liability; and 4) survey, opinion, and market research studies are not goods or services with respect to the survey respondent. | Applicability of TCPA to Market Research Studies |

| <b>Decisions Released:</b> |   |                      |                |                      |
|----------------------------|---|----------------------|----------------|----------------------|
| <b>Filer</b>               | <b>Title; Decision Date; Docket No.</b> | <b>Public Notice</b> | <b>Summary</b> | <b>Primary Issue</b> |
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| <b>Pending Petitions:</b>                  |  |   |  |                                       |
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| <b>Filer</b>                               | <b>Title; Filing Date; Docket No.</b>  | <b>Public Notice</b>  | <b>Summary</b>   | <b>Primary Issue</b>                  |
| ContextMedia, Inc d/b/a Outcome Health     | Petition of ContextMedia, Inc. d/b/a Outcome Health for Clarification, or, in the Alternative, for Declaratory Ruling; Oct. 20, 2017; 02-278 | Released: Oct. 27, 2017; Comments Due: Nov. 27, 2017; Reply Comments Due: Dec. 12, 2017 | ContextMedia seeks clarification that a technical glitch that causes a company's text message opt-out system to fail for some customers does not violate the TCPA if the customer continues to receive text messages to which the customer previously provided consent. ContextMedia argues that a safe harbor for such technical errors would build on the Commission's SoundBite precedent by reinforcing incentives for companies to attempt to comply with the TCPA. Therefore, according to ContextMedia, the safe harbor it proposes would serve the public interest.  | TCPA Safe Harbor for Technical Errors |
| ViSalus, Inc.                              | Petition for Retroactive Waiver Request for Expedited Ruling; Sept. 14, 2017; 02-278   |   | Petitioner requests a retroactive waiver for any calls made between Oct. 16, 2013 (when the FCC's new prior written consent standard went into effect) and the Commission's July 10, 2015 declaratory ruling that were based on prior express written consent obtained before Oct. 16, 2013. Petitioner also requests a waiver period from the July 10, 2015 declaratory ruling until October 7, 2015 to allow for the period of time it needed to obtain new consents from customers that provided written consent to receive text messages prior to October 16, 2013. Petitioner argues that it is similarly situated to the marketing companies to whom the FCC granted a similar retroactive waiver in the July 10, 2015 TCPA Omnibus Order. | Prior Express Written Consent         |
| Credit Union National Association ("CUNA") | Petition for Declaratory Ruling; Sept. 29, 2017; 02-278  | Released: Oct. 6, 2017; Comments Due: Nov. 6, 2017; Reply Comments Due: Nov. 21, 2017   | CUNA asks the Commission to treat informational calls from credit unions to customers' wireless numbers the same as calls to residential numbers for TCPA purposes. In other words, CUNA is asking the Commission to relax TCPA protections for wireless numbers when it comes to informational calls made by credit unions. CUNA proposes two options to realize its goal: 1) CUNA requests that the Commission adopt an established business relationship ("EBR") exemption for informational calls and text messages to cell phones; or 2) CUNA seeks a free-to-end-user exemption for informational calls made by credit unions pursuant to Section 227(b)(2)(C) of the TCPA.  | Scope of Prior Express Consent Rule   |
| Amerifactors Financial Group, LLC          | Petition for Expedited Declaratory Ruling; July 13, 2017; 02-278 and 05-338  | Released: July 18, 2017; Comments Due: Aug. 17, 2017; Reply Comments Due: Sept. 1, 2017 | Amerifactors asks the Commission to clarify that the TCPA does not apply to fax advertisements a "recipient receives through online fax services or on a device other than a telephone fax machine." According to Amerifactors, faxes received on a device other than a telephone fax machine do not fit within the plain meaning of the TCPA and do not cause the harms the TCPA seeks to remedy. Amerifactors also argues its clarification will reduce the number of harmful and unnecessary class action lawsuits involving the TCPA. Finally, the Company argues application of the TCPA to fax advertisement delivered to a device other than a telephone fax machine violates the First Amendment.  | E-Faxes                               |
| Lane Labs-USA, Inc.                        | Petition for Waiver; Feb. 24, 2017; 02-278 and 05-338  | Released: Mar. 3, 2017; Comments Due: Mar. 17, 2017; Reply Comments Due: March 24, 2017 | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner after the date of the regulation and prior to April 30, 2015. Petitioner claims that the Fax Order decision shows it should also be granted waiver just like the similarly suited petitioners in that case.  | Fax Opt-Out Waiver                    |
| Gateway Seminars, Inc.                     | Petition for Waiver; Feb. 28, 2017; 05-338 and 02-112  | Released: Mar. 3, 2017; Comments Due: Mar. 17, 2017; Reply Comments Due: March 24, 2017 | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner after the date of the regulation and prior to April 30, 2015. Petitioner claims that because of this law, it is in large class action lawsuit. Petitioner further claims that the Fax Order decision shows it should also be granted waiver just like the similarly suited petitioners in that case.   | Fax Opt-Out Waiver                    |
| M3 USA Corporation                         | Petition for Expedited Declaratory Ruling; March 20, 2017; 02-278  | Released: Mar. 28, 2017; Comments Due: April 27, 2017; Reply Comments Due: May 15, 2017 | Petitioner conducts market research through surveys and invited participants to join their survey by sending fax invitations. Thus, Petitioner seeks an expedited declaratory ruling from the Commission to confirm that its research survey invitations are not TCPA "advertisements." Petitioner claims that such faxes are not pretexts for advertisements under TCPA because the faxes are informational, market research surveys are not property or goods, etc.  | TCPA Advertisement Classification     |

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| M3 USA Corporation  | Petition for Waiver; Feb. 14, 2017; 02-278 and 05-338   | Released: Feb. 22, 2017; Comments Due: March 8, 2017; Reply Comments Due: March 15, 2017 | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver                  |
| Craig Cunningham and Craig Moskowitz  | Petition for Rulemaking and Declaratory Ruling; Jan. 22, 2017; 02-278 and 05-338  | Released: Feb. 8, 2017; Comments Due: March 10, 2017; Reply Comments Due: March 27, 2017 | Petitioners argue that the Commission improperly interpreted the TCPA in its 1992 and 2008 Orders by finding that a person who knowingly releases his or her phone numbers or provides his or her phone numbers as part of a credit application has impliedly consented to be called, including for calls initiated by an autodialer or that use a prerecorded or artificial voice. Petitioners ask that the Commission initiate a rulemaking proceeding to clarify that prior express consent "must be (i) express consent, (ii) specifically to receive autodialed and/or artificial voice/prerecorded telephone calls, (iii) at a specified telephone number, and (iv) be in writing." Alternatively, Petitioners seek a declaratory ruling from the Commission that clarifies the meaning of prior express consent and eliminates the implied consent rationale created in the 1992 and 2008 Orders.  | Scope of Prior Express Consent Rule |
| Foot Levelers, Inc.   | Petition of Foot Levelers, Inc. for Retroactive Waiver; Feb. 2, 2017; 02-278 and 05-338                                     | Released: Feb. 9, 2017; Comments Due: Feb. 23, 2017; Reply Comments Due: March 2, 2017   | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver                  |
| Chester Limited, Inc.   | Petition of Chester Limited, Inc. for Retroactive Waiver; Jan. 23, 2017; 02-278 and 05-338                                  | Released: Feb. 9, 2017; Comments Due: Feb. 23, 2017; Reply Comments Due: March 2, 2017   | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver                  |
| Navient Corp.; Nelnet, INC.; Great Lakes Higher Education Corporation; Pennsylvania Higher Education Assistance Agency; Student Loan Servicing Alliance | Petition for Reconsideration , Dec. 16, 2017; 02-278  |  | The Petition for Reconsideration involves the FCC's adopted rule to implement the Bipartisan Budget Act of 2015's amendments to the TCPA. According to the Petitioner, the FCC's rulemaking authority under an amended TCPA is incredibly broad and gives them a vast amount of regulated control over federal debt collectors. The Petition for Reconsideration claims that the FCC's rules are contrary to the plain language of the statute, contrary to Congress's intent, and are not supported by any data on record because this legislation was intended to make it easier for debt collectors to reach students. Specifically, this Petition calls into question the FCC's three-call attempt limit for federal debt collectors and the FCC's limit on calls to anyone other than the debtor. The Petition asks the FCC to reconsider this rulemaking after observing Congress's intent and the plain language of the statutory provision. | Petition for Reconsideration        |
| Renue Systems Development Corp., Inc.; Renue Systems, Inc., Renue Systems of Chicago, Inc.  | Petition for a Retroactive Waiver; Jan., 4, 2017; 02-278 and 05-338   | Released: Feb. 2, 2017; Comments Due: Feb. 16, 2017; Reply Comments Due: Feb. 23, 2017   | Renue requests that the FCC grant it a retroactive waiver of section 64.1200(a)(4)(iv) (also known as the "Opt-Out Rule") of the Commission's rules. Renue only seeks this waiver for fax advertisements that were previously sent by Renue with a recipient's prior permission, but without including the rule's opt-out notice requirements. Renue seeks this waiver because the company is a defendant in a class action lawsuit for sending an advertisement fax without the required opt-out notice. Renue claims that it should be granted a waiver because it acted promptly in applying and was not informed of the TCPA violation until well after the Ando order was released.  | Fax Opt-Out Waiver                  |
| Brigadoon Fitness Inc. and Brigadoon Financial Inc.   | Petition of Brigadoon Fitness Ind. And Brigadoon Financial Inc. for Retroactive Waiver; November 7, 2016; 02-278 and 05-338 | Released: Dec. 2, 2016; Comments Due: Dec. 16, 2016; Reply Comments Due: Dec. 23, 2016   | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver                  |

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| John Lennartson   | Petition for Reconsideration of Retroactive Waiver to Papa Murphy's Holdings, Inc. and Papa Murphy's International L.L.C.; November 15, 2016; 02-278                                  |   | Petitioner asks the Commission to reconsider its retroactive waiver of Section 64.1200(a)(2) for Papa Murphy's, which the Commission granted on October 14, 2016. Petitioner argues that Papa Murphy's did not show that it was similarly situated to other parties to whom CGB granted retroactive waivers because Papa Murphy's did not show that its failure to comply with Section 64.1200(a)(2) was based on confusion about the rule; rather, Petitioner argues that Papa Murphy's was ignorant of the rule's existence. Alternatively, Petitioner argues that the retroactive waiver should be amended to clarify that it does not limit the District Court's jurisdiction over the claims made by Petitioner in related litigation involving Papa Murphy's.  | Prior Express Written Consent |
| bebe stores, inc.   | Petition for Expedited Declaratory Ruling Granting a Limited, Retroactive Waiver of Section 64.1200(a)(2) of the Federal Communications Commission's Rules; November 18, 2016; 02-278 | Released: Dec. 2, 2016; Comments Due: Jan. 6, 2017; Reply Comments Due: Jan. 23, 2017 | Petitioner requests a retroactive waiver for any text messages sent to customers between Oct. 16, 2013 (when the FCC's new prior written consent standard went into effect) and the Commission's July 10, 2015 declaratory ruling that were based on prior express written consent obtained before Oct. 16, 2013. Petitioner also requests a waiver period from the July 10, 2015 declaratory ruling until October 7, 2015 to allow for the period of time it needed to obtain new consents from customers that provided written consent to receive text messages prior to October 16, 2013. Petitioner argues that it is similarly situated to the marketing companies to whom the FCC granted a similar retroactive waiver in the July 10, 2015 TCPA Omnibus Order.  | Prior Express Written Consent |
| Fetch, Inc. d/b/a Petplan   | Petition for Reconsideration; November 30, 2016; 02-278 and 05-338  |   | Petitioner seeks reconsideration of CGB's November 2, 2016 Order denying it a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission's rules. Petitioner argues that its waiver request should not be read as "simple ignorance" of the law. Rather, the waiver request speaks only to Petitioner being unaware of the fax opt-out notice for solicited faxes, the issue at the crux of all such recent waiver requests regarding fax opt-out notices. Moreover, Petitioner argues that the Commission has granted waiver requests to other petitioners who have expressly admitted they were unaware of the opt-out notice. Therefore, CGB's denial of Petitioners request was arbitrary.  | Fax Opt-Out Waiver            |
| Bais Yaakov of Spring Valley  | Application for Full Commission Review; December 1, 2016; 02-278 and 05-338   |   | Petitioner requests review of CGB's November 2 Order granting a retroactive waiver to Educational Testing Service ("ETS"). Petitioner argues that ETS's petition was not timely filed. Petitioner also argues that CGB does not have the authority to extinguish a statutorily established private right of action retroactively. Finally, Petitioner argues that ETS failed to demonstrate good cause for a waiver by failing to describe with particularity the facts and circumstances warranting a waiver.   | Fax Opt-Out Waiver            |
| West Loop Chiropractic & Sports Injury Center, Ltd. and West Loop Health & Sports Performance Center, LLC | Application for Review; Dec. 2, 2016; 02-278 and 05-338   |   | Petitioners request review of CGB's November 2 Order granting a retroactive waiver to North American Bancard, LLC ("NAB"). Petitioners argue that NAB's Petitioner was not timely filed and that the faxes at issue were sent to Petitioners by NAB after April 30, 2015, the deadline by which the Commission required fax advertisers to come into compliance with the opt-out notice rules after its clarification of the rule in October 2014. Petitioners also argue that they provided evidence to the Commission that NAB was not similarly situated to other petitioners seeking retroactive waiver of the fax opt-out notice rule because NAB had been involved in other TCPA litigation and was, therefore, on notice of the statute and regulations. Petitioners claim that CGB's failure to consider this evidence was unfair and amounts to the creation of an irrebuttable presumption in favor of granting retroactive waivers to any party that seeks one. | Fax Opt-Out Waiver            |

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| Lawrence S. Brodsky; JT's Frames, Inc.; Career Counseling, Inc. d/b/a Snelling Staffing Services; Big Thyme Enterprises, Inc.; Whiteaire Clinic, P.A., Inc.; Cin-Q Automobiles, Inc.; Medical & Chiropractic Clinic, Inc.; Shaun Fauley; St. Louis Heart Center, Inc.; JWD Automotive, Inc.; Russell M. Holstein, PhD, LLC; Carradine Chiropractic Center, Inc. | Application for Review; Dec. 2, 2016; 02-278 and 05-338   |   | Petitioners argue that the Commission should deny all of the waivers granted in the November 2, 2016 CGB Order for the same reasons stated in TCPA Plaintiffs' pending Application for Review from CGB's Aug. 28, 2015 Order granting retroactive waivers of the fax opt-out notice rules. The pending Application for Review argues that the Commission has no authority to waive TCPA liability for a private right of action pending in a court of law and that there is evidence that the fax advertising industry immediately understood the Commission's 2012 Order requiring opt-out notices for solicited and unsolicited fax advertisements. Petitioners also argue that Buccaneers Limited Partnership ("BLP") and HumanaDental Insurance Co. ("Humana") did not timely file their retroactive waiver requests because both parties had been involved in TCPA litigation involving the opt-out notice rules for years prior to the Commission's October 2014 Order clarifying the opt-out notice rules. Therefore, Petitioners argue that BLP and Humana cannot argue they were unaware of or confused by the Commission's rules. | Fax Opt-Out Waiver              |
| Mortgage Bankers Association  | Application for Review; Dec. 15, 2016; 02-278   |   | MBA seeks reconsideration of its Petition for Exemption, which the FCC's Consumer and Governmental Affairs Bureau ("CGB") denied on November 15, 2016. MBA argues that the Order denying its Petition for Exemption was an inappropriate use of delegated authority, that a petitioner is not required to show that the calls subject to the exemption will be free to end users, that the Order ignores publicly available information regarding the ability of callers to make free-to-end-user calls, and that the CGB erred in concluding that mortgage servicing calls are not time-sensitive. MBA also reasserts its argument that an exemption to the TCPA's prior express consent requirements for mortgage servicing calls would help mortgage servicers fulfill various state and federal consumer protection laws requiring mortgage servicers to call borrowers. Finally, MBA claims that these benefits outweigh the privacy interests protected by the TCPA.  | Prior Express Consent Exemption |
| Safemark Systems, LP  | Petition of Safemark Systems, LP for Retroactive Waiver of C.F.R. § 64.1200(a)(4)(iv), Oct. 6, 2016, 02-278 and 05-338  | Released: Oct. 28, 2016; Comments Due: Nov. 14, 2016; Reply Comments Due: Nov. 21, 2016 | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver              |
| Cartridge World North America, LLC  | Petition of Cartridge World North America, LLC for Retroactive Waiver, Aug. 24, 2016 (posted Oct. 18, 2016), 02-278 and 05-338                                |   | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver              |
| Cynosure, Inc.  | Petition for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules or, in the Alternative, for a Declaratory Ruling, Oct. 26, 2016, 02-278 and 05-338 | Released: Oct. 28, 2016; Comments Due: Nov. 14, 2016; Reply Comments Due: Nov. 21, 2016 | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner. In the alternative, Cynosure asks the Commission to issue a declaratory ruling clarifying that Section 64.1200(a)(4)(iv) does not apply to solicited fax advertisements or Section 227(b) of the TCPA is not the legal basis for Commission's rules.   | Fax Opt-Out Waiver              |
| United Auto Credit Corporation  | Petition of United Auto Credit Corporation for Retroactive Waiver, Oct. 28, 2016, 02-278 and 05-338   | Released: Dec. 2, 2016; Comments Due: Dec. 16, 2016; Reply Comments Due: Dec. 23, 2016  | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver              |
| Cynosure, Inc.  | Petition of Cynosure, Inc. for Rulemaking and Declaratory Ruling, Sept. 30, 2016, 02-278 and 05-338; WITHDRAWN Oct. 26, 2016                                  |   | Petitioner seeks a retroactive waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of the petitioner.  | Fax Opt-Out Waiver              |

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| RingCentral, Inc.   | Petition for Expedited Declaratory Ruling; July 6, 2016; 02-278  | Released: July 29, 2016; Comments Due: Aug. 29, 2016; Reply Comments Due: Sept. 13, 2016                   | RingCentral seeks clarification that a fax broadcaster whose facilities or services are used by a third party content generator is not itself the "sender" of a fax for TCPA purposes. It also asks that de minimis promotional phrases contained in otherwise informational, transactional, or third party fax advertising do not constitute unsolicited advertisements under the TCPA. Alternatively, RingCentral asks that fax broadcasters be permitted to rely on third party consent for sending de minimis information about the fax broadcaster as part of a fax that is otherwise lawfully sent by a fax broadcaster's customer.  | Fax Broadcaster Liability                                 |
| National Consumer Law Center  | Petition for Reconsideration of Declaratory Ruling and Request for Stay of Pending Reconsideration; July 26, 2016; 02-278  | Released: Aug. 1, 2016; Comments Due: Aug. 11, 2016 and 31; Reply Comments Due: Aug. 16 and Sept. 15, 2016 | Petitioner asks the FCC to reconsider its Broadnet Ruling, which found the TCPA does not apply to the federal government or its contractors. Specifically, Petitioner seeks reconsideration of the FCC's extension of its order to federal government contractors. Petitioner also requests that the FCC stay its Broadnet Ruling.   | TCPA Application to Government and Government Contractors |
| Anthem, Inc.; Blue Cross Blue Shield Association; WellCare Health Plans, Inc.; and the American Association of Healthcare Administrative Management | Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the TCPA Omnibus Declaratory Ruling and Order; July 28, 2016; - | Released: Aug. 19, 2016; Comments Due: Sept. 19, 2016; Reply Comments Due: Oct. 4, 2016                    | Petitioners ask the FCC to clarify that the use of health plan member telephone numbers under the TCPA is the same as regulations governing use of those number under HIPAA. Petitioners argue that the FCC's 2015 Omnibus Order could limit non-telemarketing healthcare calls more than HIPAA already does, which petitioners argue could prevent certain valuable healthcare calls from being made.   | Prior Express Consent Exemption                           |
| Professional Services Council   | Petition for Reconsideration; Aug. 4, 2016; 02-278   | Released: Aug. 15, 2016; Comments Due: Sept. 14, 2016; Reply Comments Due: Sept. 29, 2016                  | The Professional Services Council seeks reconsideration of the FCC's Broadnet Ruling because the FCC's reliance on common law principles narrows the decision more than the Council believes the FCC intended. Specifically, the Council argues that 1) none of the petitions resolved by the decision sought relief on common law agency grounds; 2) contractors acting on behalf of the federal government are not generally considered agents of the government; and 3) long-standing precedent does not require an agency relationship for a government contractor to benefit from derivative sovereign immunity.  | TCPA Application to Government and Government Contractors |
| Network Communications International Corp.  | Petition for Expedited Declaratory Ruling, May 10, 2016, 02-278  | Released: June 7, 2016; Comments Due: July 7, 2016; Reply Comments Due: July 22, 2016                      | Petition to confirm that NCIC may utilize a single follow-up text message protocol, rather than already permitted prerecorded calls, for unsuccessful collect calls initiated by individuals calling from prisons within NCIC's network.   | Scope of Prior Express Consent                            |
| Mobile Media Technologies   | Petition of Mobile Media Technologies for Declaratory Ruling or, in the Alternative, Retroactive Waiver; April 5, 2016; 02-278 and 07-135  | Released: April 27, 2016 Comments Due: May 27, 2016; Reply Comments Due: June 13, 2016                     | Petitioner requests that the Commission clarify that neither the TCPA nor the FCC's rules require a party sending a text to offer a particular method by which a consumer may revoke consent and, further, that to be reasonable, a consumer's method of revocation must actually reach the texting party. In the alternative, Petitioner seeks a retroactive waiver of the Commission's July 2015 Declaratory Ruling through November 7, 2015 to permit Petitioner to implement a text system that recognizes a reply text "stop" as a revocation of consent.   | Revocation of Consent                                     |
| Todd C. Bank  | Petition for Declaratory Ruling to Clarify the Scope of Rule 64.1200(a)(2); March 7, 2016; 02-278  | Released: March 31, 2016 Comments Due: May 2, 2016; Reply Comments Due: May 17, 2016                       | Petition seeks clarification that prohibited pre-recorded calls to residential numbers under Section 64.1200(a)(2) of the Commission's Rules includes all numbers registered as residential numbers, regardless of whether the number is used by the residential user as a business line. Petitioner argues that, as more and more people work from home, it would subvert the purpose of the TCPA to permit pre-recorded calls to residential lines on the basis that the line is also used for business purposes. Petitioner seeks a bright-line rule that any telephone number registered with a telephone company as a residential line is residential for purposes of the TCPA. | Scope of Prior Express Written Consent Rule               |
| Lifetime Entertainment Services, LLC  | Lifetime Entertainment Services, LLC Petition for Declaratory Ruling to Clarify Scope of Rule 64.1200(a)(3) or, in the Alternative, for Retroactive Waiver; Dec. 11, 2015 (posted 02/02/2016); 02-278  | Released: Feb. 5, 2016 Comments Due: March 7, 2016 Reply Comments Due: March 21, 2016                      | Lifetime seeks clarification that prerecorded calls from a cable operator or a cable programming network to a residential telephone line of a subscriber already entitled to watch the programming about which the call is made are informational calls. As such, the calls would be subject to the Commission's exemption from the TCPA for non-commercial calls made to residential lines. Alternatively, Lifetime asks for a retroactive waiver of the Commission's rules for any calls it made to subscribers of its channels.   | Scope of Prior Express Consent Rule                       |

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| Renaissance Systems and Service, LLC ("RSS")                       | Renaissance Systems and Service, LLC's Application for Full Commission Review; Jan. 8, 2016; 02-278 and 05-338  |  | In a Dec. 9, 2015 Order, the Consumer and Governmental Affairs Bureau ("CGB") denied RSS's petition for retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission's rules because CGB said the waiver requested admitted Petitioner's ignorance of the relevant rule, which the Commission made clear cannot be the basis for waiver of its rules. However, RSS argues in its Application for Review that CGB misread its waiver request. Specifically, RSS claims that its waiver request does not admit ignorance of the Commission's fax opt-out notice rules; rather, RSS's petition for retroactive waiver admitted to ignorance of the Commission's Oct. 30, 2014 Anda Order as explanation for why it did not file its waiver request sooner. | Fax Opt-Out Waiver                             |
| Ohio National Mutual, Inc.   | Petition for Reconsideration of December 9, 2015 Order Regarding Retroactive Waiver; Jan. 8, 2016; 02-278 and 5-338   |  | In a Dec. 9, 2015 Order, the Consumer and Governmental Affairs Bureau ("CGB") denied Ohio National Mutual's petition for retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission's rules because CGB said the waiver requested admitted Petitioner's ignorance of the relevant rule, which the Commission made clear cannot be the basis for waiver of its rules. However, Ohio National Mutual argues in its Petition for Reconsideration that CGB misread its waiver request. Petition claims that its waiver request does not admit ignorance of the Commission's fax opt-out notice rules and that the Commission granted previous waivers using similar language to Ohio National Mutual's petition.  | Fax Opt-Out Waiver                             |
| Wilder Chiropractic, Inc. ("Wilder")                               | Application for Review; Jan. 8, 2016; 02-278 and 05-338   |  | Wilder argues the Consumer and Governmental Affairs Bureau ("CGB") erred in granting a retroactive waiver of the Commission's fax opt-out rules to Scrip Holding Co. in CGB's Dec. 9, 2015. Wilder claims the waiver request of Scrip Holding Co. and four other petitioners that were granted in the Dec. 9 Order were not timely filed because the petitioners did not "make every effort" to file a waiver petition by April 30, 2015 as suggested by the Commission's Oct. 30, 2014 Anda Order. Wilder also has a pending Application for Review regarding CGB's Aug. 28, 2015 grant of 117 waivers of the Commission's fax opt-out rules.   | Fax Opt-Out Waiver                             |
| Advanced Care Scripts, Inc.  | Petition for Declaratory Ruling to Clarify Statutory Basis for Rule 64.100(a)(3)(iv) and/or for Ruling Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) and (iv) and/or Waiver; 02-278 and 05-338; Nov. 12, 2015, WITHDRAWN March 1, 2016   | Released: Dec. 4, 2015<br>Comments Due: Dec. 18, 2015<br>Reply Comments Due: Dec. 30, 2015 | Petitioner requests a retroactive waiver of 47 C.F.R. 64.12000(a)(4)(iv) with respect to any faxes transmitted on or behalf of Petitioner prior to April 30, 2015. Petitioner argues that good cause exists for waiver as there is uncertainty regarding the opt-out requirements for solicited fax advertisements.  | Fax Opt-Out Waiver                             |
| Joseph T. Ryerson & Son, Inc.                                      | Petition for Declaratory Ruling, Nov. 3, 2015, 02-278, 05-338   | Released: 11/04/2015<br>Comments Due: 12/8/2015<br>Reply Comments Due: 12/15/2015          | Petitioner requests declaratory ruling that faxes both initiated and received in digital form are exempt from the TCPA. Petitioner contends that such transmissions should instead be governed by the CAN-SPAM Act (15 U.S.C. 7701).   | Applicability of TCPA to Faxes in Digital Form |
| Sumotext Corp.   | Petition for Expedited Clarification or, in the alternative, for Declaratory Ruling, 9/03/2015, 02-278 and 07-135   | Released: 11/12/2015<br>Comments Due: 12/18/2015<br>Reply Comments Due: 01/08/2016         | Petitioner seeks clarification of a July 10, 2015 Declaratory Ruling and Order, FCC 15-72 para. 3. The clarification sought is related to the elements that a business can use to prove if TCPA disclosures were provided in a "clear and conspicuous" manner. The FCC wrote that a program where a consumer sends a company a key word and the company then sends a coupon complies with the TCPA but only as long as the business sends no more than one text as a response. If a company sends more than one text, FCC rules "require prior express written consent with the specified disclosures." Petitioner requests that the FCC clarify this last requirement.  | Scope of Prior Express Written Consent Rule    |
| Bais Yaakov of Spring Valley; Roger H Kaye; and Roger H Kaye MD PC | Application for Full Commission Review, In the Matter of Petitions for Declaratory Ruling and Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission, 9/25/2015, CG 02-278 and CG 05-338. |  | Petitioners appeal decision granting 117 waiver requests in Aug 28, 2015 CGB action (see Decisions Released section below). The petitioners state that by granting the ruling in "one fell swoop," CGB acted "in excess of the Bureau's authority and without consideration of any individual facts (or lack thereof) underlying those requests." Petitioners have filed a private TCPA class action against ACT, Inc.   | Fax Opt-Out Waiver                             |
| Craftwood II, Inc., dba Bay Hardware, and Craftwood Lumber Company | Application for Review, In the Matter of Petitions for Declaratory Ruling and Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission, 9/28/2015, CG 02-278 and CG 05-338.                 |  | Petitioner appeals decision granting retroactive waiver to Senco Brands, Inc., calling the Aug. 28 Order arbitrary and capricious. The petitioner also argues the FCC violated the separation of powers and set a precedent that is against public policy. The Petitioner has filed a private TCPA lawsuit against Senco Brands.   | Fax Opt-Out Waiver                             |

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| Edward Simon  | Application for Review, In the Matter of Petitions for Declaratory Ruling and Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission, 9/28/2015 |   | Petitioner appeals decision granting retroactive waiver to "RadNet Entities", calling the Aug. 28 Order arbitrary and capricious. The petitioner also argues the FCC violated the separation of powers and set a precedent that is against public policy. The Petitioner has filed a private TCPA lawsuit against "RadNet Entities".   | Fax Opt-Out Waiver                  |
| Craftwood Lumber Co.  | Application for Review, In the Matter of Petitions for Declaratory Ruling and Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission, 9/28/2015 |   | Petitioner appeals decision granting retroactive waiver to United Stationers, Inc., calling the Aug. 28 Order arbitrary and capricious. The petitioner also argues the FCC violated the separation of powers and set a precedent that is against public policy. The Petitioner has filed a private TCPA lawsuit against United Stationers.   | Fax Opt-Out Waiver                  |
| Beck Simmons et al  | Application for Review, In the Matter of Petitions for Declaratory Ruling and Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission, 9/28/2015 |   | Petitioners appeal decision granting 117 waiver requests in Aug 28, 2015 CGB action, saying that the FCC did not have the authority to grant the waivers and that the record shows that there was no "industry-wide confusion" about opt-out regulation. Petitioners have filed a private TCPA class action against Allscripts-Misy's Health Care Solutions Inc, Alma Lasers Inc., and McKesson Corp.  | Fax Opt-Out Waiver                  |
| American Bankers Association (ABA)  | Petition for Reconsideration of the American Bankers Association, 8/10/2015, 02-278 and 07-135  |   | ABA seeks reconsideration of the exemption granted to financial institutions in the TCPA Omnibus Order. Specifically, ABA asks the Commission to reconsider its requirement that financial institutions make calls or send texts only to a wireless number provided by the customer of the financial institution. ABA argues this requirement will impose an unnecessary recordkeeping requirement on financial institutions, limit the ability of banks to send urgent information to customers, and undermine the Commission's stated purpose in adopting the exemption. | Scope of Prior Express Consent Rule |
| Coalition of Higher Education Assistance Organizations ("COHEAO"), et al. | Letter; June 5, 2015; 02-278  |   | COHEAO requests reform of the TCPA for organizations acting on behalf of the federal government with respect to federal student loan servicing and collection. Specifically, COHEAO asks the FCC to confirm, through a declaratory ruling or rulemaking, that student loan organizations and institutions of higher education are permitted to use automatic dialing systems and prerecorded voice and text messages when contacting borrowers on their wireless phones.   | Scope of Prior Express Consent Rule |
| Anthem, Inc.  | Petition for Declaratory Ruling and Exemption Regarding Non-Telemarketing Healthcare Calls; June 10, 2015; 02-278   | Released: 10/28/2015; Comments Due: 09/30/2015; Reply Comments Due: 10/15/2015          | Anthem requests a declaratory ruling expressly exempting non-telemarketing health care related calls and texts from current TCPA rules. Specifically, Anthem requests that non-telemarketing health care related calls and text messages, including calls and texts related to case management, preventative medicine, and using or maintaining medical benefits, be subject to an "opt out" rather than "opt in" prior consent regime.  | Scope of Prior Express Consent Rule |
| Puget Sound Energy, Inc.  | CG Docket No. 02-278; Apr. 3, 2015; 02-278  | Released: May 8, 2015; Comments Due: May 22, 2015; Reply Comments Due: May 29, 2015     | Petitions the FCC to confirm that providing a telephone number to an energy utility constitutes "prior express consent" to receive non-telemarketing, informational calls related to the customer's utility service, which are placed using an autodialer or prerecorded voice.  | Prior Express Consent               |
| Sales Verification Company, LLC   | Petition to Seek Retroactive Waiver for Temporary Relief from Past Requirements of 47 C.F.R. § 64.1200(a)(4)(iv) as Applicable to Solicited Faxes; 02-278 and 05-338; Jan. 29, 2015   | Released: Jan. 30, 2015; Comments Due: Feb. 13, 2015; Reply Comments Due: Feb. 20, 2015 | Sales Verification seeks a waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of petitioner.   | Fax Opt-Out Waiver                  |



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| <p>AGR Group, LLC; AGR Group, Inc.; AGR Group California, LLC; AGR Group Nevada, LLC; Utilities Marketing Group, LLC; AGR Field Services, LLC; Energy Professionals, LLC; U.S. Power and Gas, Inc.; and All Global Resources, LLC</p> | <p>Petition to Seek Retroactive Waiver for Temporary Relief from Past Requirements of 47 C.F.R. § 64.1200(a)(4)(iv) as Applicable to Solicited Faxes; 02-278 and 05-338; Jan. 29, 2015</p> | <p>Released: Jan. 30, 2015; Comments Due: Feb. 13, 2015; Reply Comments Due: Feb. 20, 2015</p> | <p>AGR Group seeks a waiver from Section 64.1200(a)(4)(iv) of the Commission's rules for any fax sent by or on behalf of petitioner.</p>  | <p>Fax Opt-Out Waiver</p>                              |
| <p>Florence Mussat, M.D., S.C.</p>  | <p>Petition for Reconsideration of Retroactive Waiver to Power Liens, LLC; Nov. 18, 2014; 02-278 and 05-338</p>  |  | <p>Petitioner seeks reconsideration of the retroactive waiver granted by the Commission to Power Liens, LLC on Oct. 30, 2014. Petitioner is the plaintiff in an ongoing TCPA lawsuit involving Power Liens, and Petitioner argues the Commission should not have granted a waiver for any fax advertisements sent without an appropriate opt-out notice after Feb. 24, 2012 when the Commission filed its Amicus Brief urging reversal in <i>Nack v. Walburg</i>. Petitioner claims the Commission's Amicus Brief made clear that all faxes, both solicited and unsolicited, must comply the Commission's opt-out notice requirements. Petitioner further argues that the Commission failed to make the necessary individualized findings of fact to warrant the retroactive waiver it provided in its Oct. 30 Order.</p> | <p>Fax Opt-Out Waiver Petition for Reconsideration</p> |
| <p>Vincent Lucas</p>  | <p>Petition for Expedited Declaratory Ruling; 06/18/2014; 02-278</p>   |  | <p>Petition seeks a declaratory ruling "holding that a person is vicariously or contributorily liable if that person provides substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 47 U.S.C. 227(b) or (c).</p>   | <p>Vicarious Liability</p>                             |
| <p>Acurian, Inc.</p>  | <p>Petition for Declaratory Ruling; 02/05/2014; 02-278</p>   |  | <p>Acurian seeks a declaratory ruling clarifying that "a telephone call to a residential landline seeking an individual's participation in a clinical pharmaceutical trial is exempt from the restrictions on prerecorded calls enacted as part of the TCPA..." Acurian claims these calls fall within Commission created exemptions (i.e., calls "not made for a commercial purpose" or calls that do "not introduce or include an advertisement or constitute telemarketing").</p>  | <p>E-Faxes</p>   |