

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02–278; DA 06–808]

### Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; comments requested.

**SUMMARY:** In this document, the Commission seeks comment on ACA International's (ACA) petition for an expedited clarification and declaratory ruling concerning the Telephone Consumer Protection Act (TCPA) rules.

**DATES:** Comments are due on or before May 11, 2006, and reply comments are due on or before May 22, 2006.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 02–278, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper should also submit their comment on diskette. These diskettes should be submitted, along with three paper copies to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Room 5–A866, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible formatted using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in “read only” mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case CG Docket No. 02–278), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: “Disk Copy—Not an Original.” Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Erica McMahon, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–0346 (voice), [Erica.McMahon@fcc.gov](mailto:Erica.McMahon@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, DA 06–808, released April 5, 2006. The full text of document DA 06–808, ACA International's submission, 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, SW., Room CY–A257, Washington, DC 20554. Document DA 06–808, ACA

International's submission, and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site <http://www.bcpweb.com> or call 1–800–378–3160. A copy of ACA International's submission may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 02–278 into the proceeding block).

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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Document DA 06–808 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>. Pursuant to §§ 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: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking

Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 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 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 should be addressed to 445 12th Street, SW., Washington, DC 20554.

#### Synopsis

On October 4, 2005, ACA filed a petition for expedited declaratory ruling seeking clarification of the rules under the Telephone Consumer Protection Act (TCPA). See *Petition for Expedited Declaratory Ruling*, filed by ACA, October 4, 2005 (Petition). Specifically,

ACA asks the Commission to clarify that 47 CFR 64.1200(a)(1)(iii) of the Commission's rules does not apply to creditors and collectors when calling telephone numbers to recover payments for goods and services received by consumers. 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 \* \* \*." See 47 CFR 64.1200(a)(1)(iii) of the Commission's rules. 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) of the Communications Act. ("It shall be unlawful for any person within the United States or any person outside 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. 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. 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. 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. 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.

(Published at 68 FR 44144, July 25, 2003). ACA believes this conclusion has created uncertainty for creditors that use 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. Accordingly, the Commission seeks comment on ACA's petition.

Federal Communications Commission.

**Jay Keithley,**

*Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E6-6022 Filed 4-25-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-796; MB Docket No. 02-167, RM-10479, RM-10770]

#### Radio Broadcasting Services; Eldorado, Fort Stockton, Mason and Mertzon, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** Audio Division, at the request of Katherine Pyeatt, dismisses the petition for rule making proposing the allotment of Channel 241A at Eldorado, Texas (RM-10479). We also deny the counterproposal filed by BK Radio proposing the substitution of Channel 239C2 for Channel 240C2 at Mason, the reallocation of Channel 240C2 from Mason to Mertzon, and the modification of Station KOTY(FM)'s license accordingly (RM-10770). We find that the counterproposal does not constitute a preferential arrangement of allotments because the reallocation of Channel 240C2 to Mertzon as a third local FM transmission service would create a gray area.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 02-167, adopted April 5, 2006, and released April 7, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

### List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6-6296 Filed 4-25-06; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 041906B]

RIN 0648-AN09

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Amendment 18A

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Availability of Amendment 18A to the reef fish resources of the Gulf of Mexico; request for comments.

**SUMMARY:** NMFS announces the availability of Amendment 18A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 18A) prepared by the Gulf of Mexico Fishery Management Council (Council). Amendment 18A would resolve several issues related to monitoring and enforcement of existing regulations, update the framework procedure for setting total allowable catch (TAC), and reduce bycatch mortality of incidentally caught endangered sea turtles and smalltooth sawfish. The intended effect of Amendment 18A is to support the Council's efforts to achieve optimum yield in the fishery, and provide social and economic benefits associated with maintaining stability in the fishery.