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Subpart BB—Restrictions on Unwanted Mobile Service Commercial Messages

AUTHORITY: 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2699.

§ 64.3100 Restrictions on mobile service commercial messages.

(a) No person or entity may initiate any mobile service commercial message, as those terms are defined in paragraph (c)(7) of this section, unless:

(1) That person or entity has the express prior authorization of the addressee;

(2) That person or entity is forwarding that message to its own address;

(3) That person or entity is forwarding to an address provided that

(i) The original sender has not provided any payment, consideration or other inducement to that person or entity; and

(ii) That message does not advertise or promote a product, service, or Internet website of the person or entity forwarding the message; or

(4) The address to which that message is sent or directed does not include a reference to a domain name that has been posted on the FCC's wireless domain names list for a period of at least 30 days before that message was initiated, provided that the person or entity does not knowingly initiate a mobile service commercial message.

(b) Any person or entity initiating any mobile service commercial message must:

(1) Cease sending further messages within ten (10) days after receiving such a request by a subscriber;

(2) Include a functioning return electronic mail address or other Internet-based mechanism that is clearly and conspicuously displayed for the purpose of receiving requests to cease the initiating of mobile service commercial messages and/or commercial electronic mail messages, and that does not require the subscriber to view or hear further commercial content other than institutional identification;

(3) Provide to a recipient who electronically grants express prior authorization to send commercial electronic mail messages with a functioning option and clear and conspicuous instructions to reject further messages by the same electronic means that was used to obtain authorization;

(4) Ensure that the use of at least one option provided in paragraphs (b)(2) and (b)(3) of this section does not result in additional charges to the subscriber;

(5) Identify themselves in the message in a form that will allow a subscriber to reasonably determine that the sender is the authorized entity; and

(6) For no less than 30 days after the transmission of any mobile service commercial message, remain capable of receiving messages or communications made to the electronic mail address, other Internet-based mechanism or, if applicable, other electronic means provided by the sender as described in paragraph (b)(2) and (b)(3) of this section.

(c) *Definitions*. For the purpose of this subpart:

(1) *Commercial Mobile Radio Service Provider* means any provider that offers the services defined in 47 CFR Section 20.9.

(2) *Commercial electronic mail message* means the term as defined in the CAN–SPAM Act, 15 U.S.C 7702 and as further defined under 16 CFR 316.3. The term is defined as ''an electronic message for which the primary purpose is commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).'' The term ''commercial electronic mail message'' does not include a transactional or relationship message.

(3) *Domain name* means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(4) *Electronic mail address* means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox and a reference to an Internet domain, whether or not displayed, to which an electronic mail message can be sent or delivered.

(5) *Electronic mail message* means a message sent to a unique electronic mail address.

(6) *Initiate,* with respect to a commercial electronic mail message, means to originate or transmit such messages or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message. ''Routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, or an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(7) *Mobile Service Commercial Message* means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of a commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) in connection with such service. A commercial message is presumed to be a mobile service commercial message if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC's wireless domain names list. The FCC's wireless domain names list will be available on the FCC's website and at the Commission headquarters, 445 12th St., SW., Washington, DC 20554.

(8) *Transactional or relationship message* means the following and is further defined under 16 CFR 316.3 as any electronic mail message the primary purpose of which is:

(i) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) To provide:

(A) Notification concerning a change in the terms or features of;

(B) Notification of a change in the recipient's standing or status with respect to; or

(C) At regular periodic intervals, account balance information or other type of account statement with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(D) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(E) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(d) *Express Prior Authorization* may be obtained by oral or written means, including electronic methods.

(1) Written authorization must contain the subscriber's signature, including an electronic signature as defined by 15 U.S.C. 7001 (E-Sign Act).

(2) All authorizations must include the electronic mail address to which mobile service commercial messages can be sent or directed. If the authorization is made through a website, the website must allow the subscriber to input the specific electronic mail address to which commercial messages may be sent.

(3) Express Prior Authorization must be obtained by the party initiating the mobile service commercial message. In the absence of a specific request by the subscriber to the contrary, express prior authorization shall apply only to the particular person or entity seeking the authorization and not to any affiliated entities unless the subscriber expressly agrees to their being included in the express prior authorization.

(4) Express Prior Authorization may be revoked by a request from the subscriber, as noted in paragraph (b)(2) and (b)(3) of this section.

(5) All requests for express prior authorization must include the following disclosures:

(i) That the subscriber is agreeing to receive mobile service commercial messages sent to his/her wireless device from a particular sender. The disclosure must state clearly the identity of the business, individual, or other entity that will be sending the messages;

(ii) That the subscriber may be charged by his/her wireless service provider in connection with receipt of such messages; and

(iii) That the subscriber may revoke his/her authorization to receive MSCMs at any time.

(6) All notices containing the required disclosures must be clearly legible, use sufficiently large type or, if audio, be of sufficiently loud volume, and be placed so as to be readily apparent to a wireless subscriber. Any such disclosures must be presented separately from any other authorizations in the document or oral presentation. If any portion of the notice is translated into another language, then all portions of the notice must be translated into the same language.

(e) All CMRS providers must identify all electronic mail domain names used to offer subscribers messaging specifically for wireless devices in connection with commercial mobile service in the manner and time-frame described in a public notice to be issued by the Consumer & Governmental Affairs Bureau.

(f) Each CMRS provider is responsible for the continuing accuracy and completeness of information furnished for the FCC's wireless domain names list. CMRS providers must:

(1) File any future updates to listings with the Commission not less than 30 days before issuing subscribers any new or modified domain name;

(2) Remove any domain name that has not been issued to subscribers or is no longer in use within 6 months of placing it on the list or last date of use; and

(3) Certify that any domain name placed on the FCC's wireless domain names list is used for mobile service messaging.

[69 FR 55779, Sept. 16, 2004, as amended at 70 FR 34666, June 15, 2005]

Subpart CC—Customer Account Record Exchange Requirements

AUTHORITY: 47 U.S.C. 154, 201, 202, 222, 258 unless otherwise noted.

SOURCE: 70 FR 32263, June 2, 2005, unless otherwise noted.

§ 64.4000 Basis and purpose.

(a) *Basis*. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose*. The purpose of these rules is to facilitate the timely and accurate establishment, termination, and billing of customer telephone service accounts.

§ 64.4001 Definitions.

Terms in this subpart have the following meanings:

(a) *Automatic number identification (ANI)*. The term automatic number identification refers to the delivery of the calling party's billing telephone number by a local exchange carrier to any interconnecting carrier for billing or routing purposes.

(b) *Billing name and address (BNA)*. The term billing name and address means the name and address provided to a [LEC] by each of its local exchange customers to which the [LEC] directs bills for its services.

(c) *Customer*. The term customer means the end user to whom a local exchange carrier or interexchange carrier is providing local exchange or telephone toll service.

(d) *Interexchange carrier (IXC)*. The term interexchange carrier means a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law.

(e) *Local exchange carrier (LEC)*. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under § 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

(f) *Preferred interexchange carrier (PIC)*. The term preferred interexchange carrier means the carrier to which a customer chooses to be presubscribed for purposes of receiving intraLATA and/or interLATA and/or international toll services.