

that use of the TV bands by primary and secondary broadcast users have priority over wireless microphones and white space devices. The Commission believes that preserving robust over-the-air broadcast television service remains an important spectrum allocation priority, especially to rural areas without adequate MVPD and broadband service alternatives. In addition, the Commission has recognized the promise of next generation ATSC 3.0 service by over-the-air television broadcasters to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services in ways that will complement the nation's burgeoning 5G networks and usher in a new wave of innovation and opportunity. As NAB and a number of broadcasters noted in their 2015 comments, adoption of the proposed rules would serve to freeze full power stations in place and hamstring their ability to expand or innovate to better serve their viewers. Having restructured the TV band, the Commission finds that to now adopt a requirement that primary and/or secondary television stations protect spectrum availability for white space devices and wireless microphones in the smaller, more densely packed television band, would not serve the public interest. Moreover, NAB points out that the proposals would require "novel engineering studies" that "would be expensive and time-consuming, particularly for smaller broadcasters" where "the cost of conducting such studies is likely to be multiples of current engineering design costs." Significantly, television stations would bear the administrative burden of studying and proving the availability of channels for other users in order to have an application that is otherwise in the public interest granted—both in congested areas where a vacant channel may not be available in the television band and in less congested areas where more spectrum is available such that analysis is not warranted. Therefore, the Commission finds that, on balance, seeking to preserve a vacant channel for shared use by white space devices and wireless microphone operations at this time, considering all of the actions that the Commission has taken since 2015 to promote those users' interests, are outweighed by the burdens of the proposals on broadcasters and the Commission terminates the proceeding.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Editorial Note: The Office of the Federal Register received this document on December 15, 2020.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CG Docket No. 02-278; FCC 20-182; FRS 17356]

Government and Government Contractor Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Adjudicatory ruling.

SUMMARY: In this document, the Commission finds that state government callers, like federal government callers, are not "persons" for purposes of the Telephone Consumer Protection Act (TCPA) because they are sovereign entities. The Commission also clarifies that a local government caller is a "person" subject to the TCPA. On reconsideration of the *Broadnet Declaratory Ruling*, the Commission reverses its previous order to the extent that it provided that a contractor making calls on behalf of the federal government was not a "person" subject to the restrictions of the TCPA. The Commission also clarifies that a state or local government contractor, like a federal government contractor, is a "person" and thus not exempt from the TCPA's restrictions. This action was taken in response to petitions that sought clarification of these issues and removes any uncertainty on when governmental callers or contractors making calls on their behalf are required to obtain the prior express consent of called parties.

DATES: Effective February 12, 2021.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338-2797 or Richard.Smith@fcc.gov; or Kristi Thornton at (202) 418-2467 or Kristi.Thornton@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, document FCC 20-182, released on December 14, 2020. The full text of document FCC 20-182 is available online at <https://docs.fcc.gov/public/attachments/FCC-20-182A1.pdf>. To request this document

in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Synopsis

1. On reconsideration of the *Broadnet Declaratory Ruling*, the Commission reverses its previous order to the extent that it provided that a contractor making calls on behalf of the federal government was not a "person" subject to the restrictions in section 227(b)(1) of the TCPA. The Commission also clarifies that a state government caller making calls in the conduct of official government business is not a "person" subject to section 227(b)(1) of the TCPA, while a state or local government contractor, like a federal contractor, is a "person" and thus not exempt from the TCPA's restrictions. Finally, the Commission clarifies that a local government is a "person" subject to the TCPA. As such, the Commission grants in part the National Consumer Law Center (NCLC) petition for reconsideration, denies the Professional Services Council (PSC) petition for reconsideration, reverses the Commission's *Broadnet Declaratory Ruling* in part, and grants in part and denies in part Broadnet's petition for declaratory ruling.

A. Federal Contractors are Subject to Section 227(b)(1) of the TCPA

2. The Commission finds that a federal government contractor is a "person" under section 227(b)(1). The term "person" as used in the TCPA and defined in the Communications Act (Act) expressly includes an "individual, partnership, association, joint-stock company, trust, or corporation" "unless the context otherwise requires." Every federal contractor, including those acting as agents, falls within one of these categories. And, unlike the federal government itself, there is no longstanding presumption that a federal contractor is not a "person." Nor does the Commission find any "context that otherwise requires" it to ignore the express language of the Act's definition of the term "person" in this situation. Absent any applicable presumption to the contrary, the express definition of "person" as contained in the Act is controlling.

3. Federal government contractors may obtain consumers' prior express consent to make calls covered by the

TCPA. Such contractors may also qualify for forms of derivative immunity when making calls on behalf of the federal government—the Commission does not alter or impair the ability of contractors to invoke derivative immunity from liability when making calls on behalf of the federal government.

4. In this document, the Commission finds that it incorrectly applied precedent on agency to federal government-contractor relationships in the *Broadnet Declaratory Ruling*. Specifically, the Commission grounded its decision in the *DISH Declaratory Ruling*, which pertained to a *non-governmental* “person” subject to the TCPA and whether it is vicariously liable for the actions of its *non-governmental* agents. As a result, the Commission finds that precedent does not bear on the issues here—which callers are TCPA “persons”—but instead involved principals and agents that were undoubtedly “persons.”

5. *Maker of the Call*. In this document, the Commission finds that a federal contractor may be able to avoid liability under the TCPA if it is not the “maker of the call.” The Commission previously clarified that a caller may be found to have made or initiated a call in one of two ways: First, by “tak[ing] the steps necessary to physically place a telephone call”; and second, by being “so involved in the placing of a specific telephone call as to be directly liable for making it.” The Commission stated that, in determining the maker of the call, it would consider “the totality of the facts and circumstances surrounding the placing of a particular call to determine: (1) Who took the steps necessary to physically place the call; and (2) whether another person or entity was so involved in placing the call as to be deemed to have initiated it, considering the goals and purposes of the TCPA.”

6. In this document, the Commission states that it will continue to apply this analysis to assess TCPA liability of parties, including government contractors, on a case-by-case basis. Based on these fact-specific criteria, Broadnet states that its “government customers, and not Broadnet, make all decisions regarding whether to make a call, the timing of the call, the call recipients, and the content of the call.” It further states that its “government customer takes the steps physically necessary to initiate a telephone town [hall] call,” while Broadnet’s role is to “manage the technical aspects of the service and to ensure that its customers do not use the platform unlawfully.”

7. The Commission finds that Broadnet is not the maker of the call,

but rather that Broadnet’s government client is the maker of the call because that government client is so involved in placing the call as to be deemed to have initiated it.

B. State Governments and State Government Contractors

8. The Commission clarifies that state government callers in the conduct of official business likewise do not fall within the meaning of “person” in section 227(b)(1), while state contractors, like their federal counterparts, are “person[s]” under that provision. As the Commission has noted, there is a “longstanding interpretive presumption” that the word ‘person’ does not include the sovereign . . . [except] upon some affirmative showing of statutory intent to the contrary.” The Supreme Court has confirmed that this presumption is applicable to state governments. Moreover, neither the TCPA nor the Communications Act defines “person” to include state governmental entities.

9. This clarification is limited to calls made by state government callers in the conduct of official business and does not exempt other types of calls made by state officials, such as those related to campaigns for re-election. Nevertheless, the Commission encourages state governments to make efforts to honor consumer requests to opt out of such exempted calls to minimize any consumer privacy implications.

10. The Commission states that it is limiting its interpretation of “person” as excluding state governments to the specific statutory provision before it: Section 227(b)(1) of the TCPA. As in the *Broadnet Declaratory Ruling*, the Commission makes no finding with respect to the meaning of “person” as used elsewhere in the Act.

11. For the same reasons the Commission found federal contractors are “persons” under section 227(b)(1) of the TCPA, the Commission now finds that contractors acting on behalf of state governments are likewise “persons.” Such contractors fall within the express language of the Communications Act’s definition of “person” and it finds no compelling argument to the contrary. As with federal contractors, this ruling leaves it to the courts to apply the body of existing immunity law to state contractors and to make determinations of derivative immunity on a case-by-case basis.

C. Local Governments and Local Government Contractors

12. The Commission clarifies that local government entities, including counties, cities, and towns, are

“persons” within the meaning of section 227(b)(1) and are, therefore, subject to the TCPA. Specifically, the Commission finds that the definition of “person” encompasses local governments because they are not sovereign entities and have generally been treated as persons subject to suit. In addition, the Commission finds that, even if the definition of “person” is ambiguous as applied to local governments, the underlying policy goals and legislative history of the TCPA support a finding that TCPA restrictions apply to local government entities.

13. The law has long recognized that a municipal corporation is a local political entity, such as a city or town, formed by charter from the state. Municipal corporations, like private corporations, have been “treated alike in terms of their legal status as *persons* capable of suing and being sued.” “The archetypal American corporation of the eighteenth century [was] the municipality,” and local governments generally are incorporated under state law and operate pursuant to a charter outlining their incorporation. The Commission further notes that all states have adopted some form of municipal corporate structure and that the federal government often treats incorporated and non-incorporated areas similarly.

14. The Commission finds that the lack of any clear indication that Congress intended to exclude local governments from the TCPA is evidence that Congress intended such government entities to fall under its purview.

15. The Commission further finds that the underlying goals and legislative history of the TCPA separately show that Congress intended local governments to be subject to the law’s restrictions. Congress’ intent to prohibit nuisance calls to consumers is instructive in the Commission’s interpretation of any ambiguity within the statute. Because of Congress’ clear intent to protect consumers, the Commission interprets any ambiguity to the benefit of the consumer.

16. The Commission also clarifies that a local government contractor is a “person,” as that term is used in section 227(b)(1) of the TCPA. Because local governments and their contractors are “persons,” they are subject to section 227(b)(1) of the TCPA and must abide by the requirements contained therein, including obtaining prior express consent when making autodialed or artificial or prerecorded voice calls to certain types of telephone numbers such as wireless numbers.

17. As with other “persons” subject to the TCPA, local governments and their

contractors may avail themselves of the TCPA's exemptions to the prior express consent requirement, such as calls made for "emergency purposes." Nothing in the Commission's decision impedes the ability of local governments or contractors to make emergency calls to wireless telephone numbers when such calls are necessary to protect the health and safety of citizens. The Commission has recently confirmed, for example, that government officials and public health care authorities, as well as a person under the express direction of such organizations and acting on its behalf, can make automated calls directly related to the imminent health or safety risks arising out of the COVID-19 pandemic without the prior express consent of the called party.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Editorial Note: The Office of the Federal Register received this document on December 28, 2020.

[FR Doc. 2020-29016 Filed 2-11-21; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Part 553

[GSAR Case 2021-G509; Docket No. 2021-0005; Sequence No. 1]

General Services Administration Acquisition Regulation; Removing Erroneous Guidance on Illustration of Forms

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing this direct final rule amending the General Services Administration Acquisition Regulation (GSAR) to make a needed technical amendment. This technical amendment is to correct the Code of Federal Regulations and remove erroneous guidance on the illustration of forms.

DATES: *Effective:* March 15, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Procurement Analyst, at gsarpolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite GSAR Case 2021-G509.

SUPPLEMENTARY INFORMATION:

I. Background

GSA has been conducting a regulatory review initiative to identify areas which might be revised or eliminated. Upon review of GSAR part 553, we uncovered a discrepancy between the Code of Federal Regulations (CFR) and acquisition.gov. The current language in subpart 553.2 in the CFR was published in the **Federal Register**, Vol. 64, No. 131, on July 9, 1999 and has not changed since. However, acquisition.gov has no such language. It is determined that all of the guidance in GSAR Part 553 in the CFR should be removed.

II. Discussion of the Rule

This direct final rule amends the GSAR to remove regulations regarding forms from subpart 553.2 and section 553.300. The subpart has no content, just the header of "Illustrations of Forms". There is no prescription information that follows. In addition, text at 553.300 contains erroneous information on how to obtain copies of forms. Therefore, the entirety of GSAR Part 553 is unnecessary.

List of Subjects in 48 CFR Part 553

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.

PART 553 [REMOVED AND RESERVED]

■ Therefore, under the authority of 41 U.S.C. 121(c), GSA removes and reserves 48 CFR part 553.

[FR Doc. 2021-02815 Filed 2-11-21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210205-0015]

RIN 0648-BJ05

Fisheries Off West Coast States; West Coast Salmon Fisheries; Rebuilding Coho Salmon Stocks

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule under the authority of the Magnuson-

Stevens Fishery Conservation and Management Act (MSA) to approve and implement rebuilding plans recommended by the Pacific Fishery Management Council (Council) for three overfished salmon stocks: Juan de Fuca, Queets, and Snohomish natural coho salmon. NMFS determined in 2018 that these stocks were overfished under the MSA, due to spawning escapement falling below the required level for the 3-year period 2014-2016. The MSA requires overfished stocks to be rebuilt, generally within 10 years.

DATES: This final rule is effective March 15, 2021.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2018, NMFS notified the Council that three stocks of coho salmon managed under the Council's Pacific Coast Salmon Fishery Management Plan (FMP) met the overfished criteria of the FMP and the MSA, and the overfished determinations were announced in the **Federal Register** on August 6, 2018 (83 FR 38292). Overfished is defined in the FMP to be when the 3-year geometric mean of a salmon stock's annual spawning escapement falls below the reference point known as the minimum stock size threshold (MSST). The 3-year geometric mean of spawning escapement fell below MSST for all three coho salmon stocks for the period 2014-2016. In response to the overfished determination, the Council developed rebuilding plans for these stocks, and the rebuilding plans were transmitted to NMFS on October 17, 2019, for approval and implementation. NMFS published a proposed rule (85 FR 61912, October 1, 2020) describing the rebuilding plans and soliciting comments from the public on the proposed rule and on the draft environmental assessments (EAs) that were prepared under the National Environmental Policy Act (NEPA).

In this final rule, NMFS approves and implements the rebuilding plans for the three overfished coho salmon stocks. For Juan de Fuca and Queets natural coho, this rule adopts the existing harvest control rules, which use an annual abundance-based stepped harvest rate control rule with stock-specific abundance levels governing the total exploitation rates applied to forecast stock abundance levels. For Snohomish natural coho, this final rule amends the existing harvest control rule by adding a 10-percent buffer to the existing escapement goal and adjusting the abundance steps during the