

December 23, 2019

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Petition for Declaratory Ruling Filed by Capital One Services, LLC*
CG Docket Nos. 18-152, 02-278

Dear Ms. Dortch:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to submit reply comments to the Federal Communications Commission (FCC) in response to the petition for declaratory ruling filed by Capital One Services, LLC (Capital One). Specifically, the petition requests a ruling that, “if the sender of a lawful informational text message transmitted through an automatic telephone dialing system (‘ATDS’) receives a valid opt-out request from the recipient in response to that message, and that informational message was part of a program in which the recipient had previously enrolled that transmits several categories of informational messages, then, pursuant to the Commission’s ruling in *Soundbite*, the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient’s opt-out request without violating the Telephone Consumer Protection Act (‘TCPA’) or related Commission rules.”²

AFSA supports Capital One’s petition and asks that the FCC grant it. We agree with the comments submitted by the American Bankers Association (ABA), the National Association of Federally-Insured Credit Unions (NAFCU), and ACA International.

The ABA wrote, “Capital One and other banks seek to honor customers’ requests to revoke consent to receive autodialed calls to their cell phones, but banks often confront ambiguous expressions of intent to revoke consent. These expressions can be ambiguous as to whether the customer intends to revoke consent at all. Additionally, where the customer is clear that he or she seeks to revoke consent, the customer’s expression can be ambiguous with respect to the scope of the revocation.”³ We agree with the ABA and request that the FCC confirm that a financial institution is permitted to send an opt-out confirmation message to clarify the customer’s intent regarding the breadth of his or her opt-out.

NAFCU’s letter asked for comprehensive Telephone Consumer Protection Act (TCPA) reform, stating, “In its current form, the TCPA continues to create limitations on the ability of credit unions to communicate freely and

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² Capital One Services, LLC, Petition for Declaratory Ruling, CG Docket Nos. 18-152 and 02-278 (filed Nov. 1, 2019). Available at <https://www.fcc.gov/ecfs/filing/110141644656>.

³ Letter from ABA to the FCC (Dec. 9, 2019).

effectively with their members regarding their personal and often time-sensitive financial information.”⁴ NAFCU asked that the FCC provide legitimate callers with a much-needed clarification on the definition of “autodialer.” AFSA echoes NAFCU’s concern that the TCPA can chill communications between financial institutions and their customers. We encourage the FCC to confirm that for equipment to be deemed an autodialer, it must meet the following conditions: (1) it must use a random or sequential number generator to store or produce numbers, and (2) it must dial those numbers without human intervention. Furthermore, we urge the FCC to clarify that only calls made using actual autodialer capabilities are subject to the TCPA’s restrictions. Calls not made by an autodialer (such as manually-dialed calls) should be excluded.

ACA International made the point that the FCC should address the opt-out confirmation question for all legitimate businesses, stating, “While Capital One’s petition focused on questions specific to its bank and its AI System ENO, it is important that the FCC reviews these questions under the lens of providing clarification for all those providing informational communications.”⁵ AFSA believes that ACA International raises a valid concern and we hope that the FCC applies its ruling generally.

Along the same lines, the petition specifically references programs in which the recipient had “enrolled.” We ask that the FCC specify that “enrolled” means that the sender had consent to contact the recipient at a mobile number, not that there is any particular way of gaining that consent.

Importantly, there is some unanimity between the industry and consumer advocacy groups. The National Consumer Law Center submitted a comment in response to the petition supporting the request to send a single, confirmatory message after revocation, subject to certain limitations.

In light of these unified comments, AFSA respectfully requests that the FCC grant Capital One’s petition as soon as possible. If you have any questions, please do not hesitate to contact me by phone at 202-776-7300 or e-mail at cwinslow@afsamail.org.

Sincerely,



Celia Winslow

Senior Vice President

American Financial Services Association

⁴ Letter from NAFCU to the FCC (Dec. 9, 2019).

⁵ Letter from ACA International to the FCC (Dec. 9, 2019).