

May 7, 2021

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278, Report No. 3170)

The American Financial Services Association (AFSA)¹ appreciates the opportunity to write to the Federal Communications Commission (FCC, or Commission) in support of the petition for partial reconsideration (Petition)² filed by ACA International, Edison Electric Institute, American Association of Healthcare Administrative Management, and the Cargo Airline Association (collectively, the “Petitioners”).

The Petition concerns the Report and Order (2020 Order, or the Order) issued on December 30, 2020 in which the Commission adopted rules further implementing the TRACED Act.³ As you know, the Order addresses existing exemptions to the Telephone Consumer Protection Act (TCPA) prior express consent requirement.⁴ AFSA agrees with the Petitioners’ assessment of the Commission’s findings regarding “prior written consent” for informational prerecorded voice messages sent to residential landlines, and further supports Petitioners’ assertion that opt-out requirements for telemarketing calls should not be extended to informational prerecorded voice messages sent to residential landlines.

AFSA supports the Petition’s request that the FCC correct an error in Appendix A to the 2020 Order.⁵ In Appendix A, the FCC appears inadvertently to have imposed a prior express *written* consent requirement, instead of a prior express consent requirement, on informational prerecorded or artificial voice calls to a residential number made after the new three-call limit. We have heard concerns from our members that absent correction of the error, their customers may potentially not

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 Petition for Partial Reconsideration Filed by ACA International, the Edison Electric Institute, the Cargo Airline Association, and the American Association of Healthcare Administrative Management, Rules and Regulations Implementing The Tel. Consumer Protection Act of 1991, CG Docket No. 02-278 (filed Mar. 29, 2021).

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(1)(A), 133 Stat. 3274, 3277 (2019) (“TRACED Act”).

⁴ Report and Order, Rules and Regulations Implementing The Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278 (2020) [hereinafter, Order]. The Commission issued the Order to implement section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act. Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019).

⁵ Order, *supra* note 5, at App’x A.

receive important, and often time-sensitive, informational calls. These financial institutions have designed their systems to capture the customer’s prior express consent, not prior express *written* consent, and would therefore not be able to place prerecorded or artificial voice calls outside of the exemption’s limits. As a result, consumers may be deprived of calls concerning their financial well-being including COVID-19-related forms of relief such as payment deferrals and fee waivers, notices regarding branch hours and closings, and other important communications. AFSA urges the Commission to promptly issue an erratum correcting the language in 47 C.F.R. §64.1200(a)(3) requiring “prior express written consent” for certain prerecorded informational messages placed to residential landlines.

In addition, AFSA agrees with the Petitioners’ comments that the Commission should reconsider its decision to align prerecorded non-telemarketing informational calls with that of prerecorded telemarketing calls. The decision unnecessarily extends opt-out requirements for prerecorded telemarketing calls to specific exempt informational calls. The application of such standards departs from longstanding rules afforded to non-marketing informational messages, which ordinarily required that the calls must identify the caller, provide a toll-free call-back number, and allow an option for the consumer to opt-out. Instead of comporting with these longstanding requirements, the Order went a step further to require compliance with sections 64.1200(b)(3) and (d). Pursuant to these rules callers must provide an automated, interactive voice, and/or a key-press-activated opt-out mechanism. The Petitioners also correctly pointed out that section 64.1200(b)(1) and (b)(2) already require prerecorded voice calls to identify the caller and provide a toll-free contact number. Therefore, the Commission should reconsider its application of opt-out rules drafted for telemarketers to informational calls and apply consistent opt-out rules for exempt informational rerecorded calls and calls with prior express consent.

In conclusion, AFSA agrees with the Petition’s request to grant limited reconsideration of the Order as described in the Petition, which would enable our members to continue to deliver important informational communications to their customers. It is our assessment that granting the Petition will support consumer privacy and protection while ensuring consumers receive important time-sensitive communications.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association