

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

**REPLY COMMENTS OF THE AMERICAN BANKERS ASSOCIATION, ACA
INTERNATIONAL, AMERICAN ASSOCIATION OF HEALTHCARE
ADMINISTRATIVE MANAGEMENT, AMERICAN FINANCIAL SERVICES
ASSOCIATION, AMERICA’S CREDIT UNIONS, MORTGAGE BANKERS
ASSOCIATION, NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES,
AND STUDENT LOAN SERVICING ALLIANCE TO THE FURTHER NOTICE OF
PROPOSED RULEMAKING**

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April 19, 2024

The American Bankers Association (ABA), ACA International, American Association of Healthcare Administrative Management, American Financial Services Association, America’s Credit Unions, Mortgage Bankers Association, National Council of Higher Education Resources, and Student Loan Servicing Alliance (the Associations)¹ appreciate the opportunity to comment on the Further Notice of Proposed Rulemaking (Further Notice) in the above-captioned proceeding.²

In the Further Notice, the Federal Communications Commission (Commission) seeks comment on the request by the National Consumer Law Center (NCLC) for the Commission to amend its rules implementing the Telephone Consumer Protection Act (TCPA) to require that callers include an automated “opt-out mechanism”³ on every call that contains an artificial or prerecorded voice message.⁴ Under the Commission’s existing TCPA rules, a caller is required to provide an opt-out mechanism when making an artificial or prerecorded telemarketing voice call or making an informational call to a residential line.⁵

The Associations’ members respect and carry out customer requests to opt out of receiving artificial or prerecorded voice calls or text messages. However, NCLC’s request to require an automated opt-out mechanism during all calls would impair the ability of consumers to receive important information from the companies with which they do business, significantly detract from the customer experience, and – particularly in light of the Commission’s recent

¹ A description of each Association is provided in the Appendix.

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-24 (Feb. 16, 2024) [hereinafter, *Revocation Order* or *Further Notice*].

³ An opt-out mechanism is a message played at the beginning of the call that advises how the call recipient may opt out of receiving future artificial or prerecorded voice calls.

⁴ *Further Notice*, ¶ 45.

⁵ 47 C.F.R. § 64.1200(b)(3).

Revocation Order⁶ – provide little, if any, benefit to consumers. We urge the Commission to reject NCLC’s request.

NCLC’s Proposal Would Harm Consumers

The Associations’ members regularly place calls to provide their customers with important and often time-critical notifications such as fraud alerts, data breach notifications, low balance and over-limit transaction alerts, and healthcare appointment reminders, among others.⁷ NCLC’s proposal could harm consumers by inadvertently encouraging them to opt out of receiving these critically important messages.

Under the Commission’s rules, when an automated opt-out message is required, it must be played immediately after the caller identifies itself and before any substantive content is presented.⁸ If the called party utilizes the opt out, the caller must immediately hang up and ensure that the called party’s number is added to the company’s internal “do not call” list.⁹ This timing provides little, if any, opportunity for the caller to identify the nature or content of the call, potentially encouraging the called party to opt out reflexively before realizing that the message contains important information. The requirements of the Revocation Order magnify this concern because a consumer’s opt out, by default, applies to *all* future consented-to messages, not solely to messages within the same category of message to which the opt out was directed.¹⁰ Thus, an inadvertent opt-out request made in response to a prerecorded or artificial voice

⁶ See footnote 2.

⁷ Comments of Am. Bankers Ass’n *et al.*, CG Docket No. 02-278, at 7 (filed July 31, 2023), <https://www.fcc.gov/ecfs/document/108011664508910/1>.

⁸ 47 C.F.R. § 64.1200(b)(3) (requiring opt-out message to be played within two seconds of the caller identifying itself at the start of the call).

⁹ *Id.* (“When the called person elects to opt out using such mechanism, the mechanism must automatically record the called person’s number to the caller’s do-not-call list and immediately terminate the call.”).

¹⁰ *Revocation Order*, ¶¶ 29-32.

informational call on one topic would opt the consumer out of all consented-to messages on all topics from that institution.¹¹

The playing of the opt out message also delays receipt of the time-sensitive information provided in the message. For example, in response to a customer's request for a one-time passcode to access the customer's account (under multifactor authentication), a financial institution may place an artificial or prerecorded voice call that contains the requested passcode. Placing an opt-out mechanism at the front of the call would delay the customer's receipt of the time-sensitive passcode, thereby delaying the customer's transaction. The opt-out mechanism also serves no purpose – a financial institution sends a one-time passcode at the direct *request* of the customer. No customer will reasonably seek to opt out of receiving additional artificial or prerecorded voice calls when, only a moment earlier, the customer requested an artificial or prerecorded voice call (the call with the passcode). Being required to listen to the opt-out message will frustrate customers.

As another example, a financial institution may use an artificial or prerecorded voice to initiate a return call to a customer who requested a call from the institution. The use of an artificial or prerecorded voice to announce that the institution is calling improves efficiency, permitting a customer service representative to join the call only if the customer is available. Including an opt-out mechanism at the beginning of the institution's call would delay the

¹¹ The concern that consumers may inadvertently opt out of important messages when presented with an opt-out message is echoed by the wireless industry in their comments in response to the Commission's separate request for comment on whether wireless providers should be exempt from the TCPA's prior consent requirements. *See* Comments of Verizon, CG Docket No. 02-278, at 9 (filed Apr. 4, 2024), <https://www.fcc.gov/ecfs/document/1040431890967/1> (asserting that “[i]t would be very difficult to create an opt-out regime that would not result in a significant number of customers choosing to opt out of a particular type of message, only to find (too late) that their decision resulted in their missing a specific message that they would have wanted. In some cases, missing that wanted message could cause substantial financial harm or threaten a consumer's safety.”) The Associations express no position in response to this separate request for comment.

customer's conversation with the institution and cause frustration. The opt-out mechanism also is unnecessary – the institution's call is placed at the request of the customer.

Financial institutions also may use an artificial or prerecorded voice call to provide information to customers during natural or other disasters. During these calls, the institution will provide information on how the customer can access resources to mitigate the harm caused by the disaster, and may give the customer the opportunity to be connected to a live agent. Additionally, for customers who have requested a loan modification, financial institutions may use an artificial or prerecorded voice call to provide an update on the status of the customer's request, as an efficient means to convey the update to the customer.

In all of these examples, the call provides important information to the consumer, which will be delayed if the caller must first play an opt-out message.

An Automated Opt Out Is Unnecessary

In 2012, the Commission correctly rejected a request to require an automated opt-out mechanism for informational calls, finding there was insufficient evidence that consumers were frustrated when receiving informational calls.¹² The Commission's finding remains as accurate today as in 2012. Available evidence suggests consumers continue to receive immense value from the informational calls they receive from their financial institution, including calls to warn of fraud and scams and to service the consumer's account. In a survey conducted last month by Morning Consult on behalf of ABA, 86% of respondents said their bank takes proactive steps to protect them from fraud/scams, 75% believe their bank does more than businesses in other

¹² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 12-21, ¶ 48 (Feb. 15, 2012).

industries to protect them from fraud/scams, and 87% are “very satisfied” or “satisfied” with their primary bank.¹³

A rule that requires an opt-out message to be played at the beginning of informational calls is particularly unnecessary with respect to calls regarding a past due account. As ACA International previously noted, these calls already are subject to Regulation F, implemented by the Consumer Financial Protection Bureau (CFPB).¹⁴ Regulation F requires a third-party collector, after receiving a consumer’s request to cease communications, to cease communications to that consumer, with limited exceptions.¹⁵ The Commission should not impose additional obligations on calls regarding a past due account beyond those promulgated by the CFPB.

Citing a number of court decisions, NCLC claims that litigation around the validity of revocation requests shows that the Commission’s finding in 2012 is no longer accurate.¹⁶ These decisions, however, reflect fact-specific disputes regarding the validity of individual revocation requests—not whether informational calls provide value to consumers. To the extent that the Commission’s rules did not clearly describe reasonable means to revoke consent, the Commission’s Revocation Order has provided clarity.¹⁷

¹³ Am. Bankers Ass’n, *ABA Unveils New Consumer Polling Data on Major Bank Policy Issues* (Mar. 19, 2024), <https://www.aba.com/about-us/press-room/press-releases/consumer-survey-major-bank-policy-issues>.

¹⁴ Comments of ACA Int’l, CG Docket 02-278, at 2-4 (filed Apr. 4, 2024), <https://www.fcc.gov/ecfs/document/1040494319592/1>.

¹⁵ 12 C.F.R. § 1006.6(c).

¹⁶ Comments of Nat’l Consumer Law Ctr. *et al.*, CG Docket 02-278, at 7-8 (filed Apr. 4, 2024), <https://www.fcc.gov/ecfs/document/10404764612841/1>.

¹⁷ *Revocation Order*, ¶¶ 9-12 (clarifying methods that conclusively demonstrate that the consumer sought to revoke consent).

Conclusion

For these reasons, we urge the Commission to deny NCLC's request to require an opt-out mechanism on all artificial or prerecorded voice calls.

Respectfully submitted,

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APPENDIX

The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

ACA International represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 113,00 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

The American Association of Healthcare Administrative Management (AAHAM) is the premier professional organization in healthcare administrative management.

The American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with closed-end and open-end credit products including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

America's Credit Unions is the national trade association for consumers' best option for financial services: credit unions. America's Credit Unions advocates for policies that allow credit unions to effectively meet the needs of their nearly 140 million members nationwide.

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry that works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans.

The National Council of Higher Education Resources' mission is to provide superior advocacy, communications, regulatory analysis and engagement, and operational support to its members so they may effectively help students and families develop, pay for, and achieve their career, training, and postsecondary educational goals.

The Student Loan Servicing Alliance (SLSA) is the nonprofit trade association that focuses exclusively on student loan servicing issues. Our membership is responsible for servicing over 95% of all federal student loans and the vast majority of private loans, and our membership is a mix of companies, state agencies, non-profits and their service partners. Our servicer members and affiliate members provide the full range of student loan servicing operations, repayment support, customer service, payment processing, and claims processing for tens of millions of federal and private loan borrowers across the country.