



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
445 12th Street, SW
Washington, DC 20554

June 11, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Louise Pentland
General Counsel
PayPal, Inc.
2211 North First Street
San Jose, California 95131

Re: Amendments to PayPal's User Agreement

Dear Ms. Pentland,

It has come to our attention via media reports and other sources that PayPal, Inc., recently announced amendments to the PayPal User Agreement, to which all PayPal account holders must agree as a condition of using the Company's services. We are concerned that these amendments may violate federal laws governing the use of autodialed, prerecorded, and artificial voice calls, including text messages. Specifically, based on publicly available information, the revised Section 1.10 of the PayPal User Agreement (which we understand will go into effect on July 1, 2015), will read as follows:

1.10 Calls to You; Mobile Telephone Numbers. You consent to receive autodialed or prerecorded calls and text messages from PayPal at any telephone number that you have provided us or that we have otherwise obtained. We may place such calls or texts to (i) notify you regarding your account; (ii) troubleshoot problems with your account (iii) resolve a dispute; (iv) collect a debt; (v) poll your opinions through surveys or questionnaires, (vii) contact you with offers and promotions; or (viii) as otherwise necessary to service your account or enforce this User Agreement, our policies, applicable law, or any other agreement we may have with you. The ways in which you provide us a telephone number include, but are not limited to, providing a telephone number at Account opening, adding a telephone number to your Account at a later time, providing it to one of our employees, or by contacting us from that phone number. If a telephone number provided to us is a mobile telephone number, you consent to receive SMS or text messages at that number. We won't share your phone number with third parties for their purposes without your consent, but may share your phone numbers with our Affiliates or with our service providers, such as billing or collections companies, who we have contracted with to assist us in pursuing our rights or performing our obligations under this User Agreement, our policies, applicable law, or any other agreement we may have with you. You agree these service providers may also contact you using autodialed or prerecorded calls and text messages, as authorized by us to carry out the purposes we

have identified above, and not for their own purposes. Standard telephone minute and text charges may apply if we contact you.¹

If PayPal plans to make autodialed, prerecorded, or artificial voice calls or text messages to its customers, please be aware that federal law places strict limits on such communications. For more than two decades, federal lawmakers have sought to protect consumers from harassing, intrusive, and unwanted calls and text messages. The FCC recognizes that “automated or prerecorded telephone calls [are] a greater nuisance and invasion of privacy than live solicitation calls,” and that “such calls can be costly and inconvenient” for consumers.² FCC regulations therefore require that before a company may make any prerecorded or artificial voice telemarketing calls to residential phones or autodialed, prerecorded or artificial voice calls or texts to wireless phones, the company must obtain the prior express written consent of the recipients.³ The company must also get prior express consent (either oral or written) for such calls to wireless phones if the call is not telemarketing.⁴

In order to comply with Section 64.1200(f)(8) of the FCC rules, the “prior express written consent” that PayPal must collect from consumers must include all of the following characteristics and features:⁵

- The agreement must be in writing;
- The agreement must bear the signature of the person who will receive the advertisement/telemarketing calls/texts;
- The language of the agreement must clearly authorize the seller (i.e., PayPal) to deliver or cause to be delivered ads or telemarketing messages via autodialed calls or robocalls/robotexts;
- The written agreement must include the telephone number to which the person signing authorizes advertisements or telemarketing messages to be delivered; and
- The written agreement must include a clear and conspicuous disclosure informing the person signing that:
 - By executing the agreement, the person signing authorizes the seller to deliver or cause to be delivered ads or telemarketing messages via autodialed calls or robocalls/robotexts; and
 - The person signing the agreement is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Given these requirements, PayPal’s recent amendments to its User Agreement raise serious concerns for the Enforcement Bureau. First, FCC requirements directly prohibit requiring

¹ PayPal Policy Updates, Amendments to the PayPal User Agreement, the PayPal Privacy Policy and the PayPal acceptable Use Policy, <https://www.paypal.com/us/webapps/mpp/ua/upcoming-policies-full> (last visited June 11, 2015).

² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

³ See 47 C.F.R. § 64.1200(a)(2)–(3).

⁴ See *id.* at § 64.1200(a)(1)(iii).

⁵ See 47 C.F.R. § 64.1200(f)(8) (definition of “prior express written consent”); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report & Order, 27 FCC Rcd 1830, 1838–44, paras. 20–34 (2012) (2012 TCPA Report and Order).

a consumer to consent to receive autodialed or prerecorded telemarketing or advertising calls as a condition of purchasing any property, good, or service, and the company must give consumers notice of their right to refuse to give such consent. PayPal's amended User Agreement does not give consumers notice of their right to refuse consent to calls that require consumer consent from PayPal, its affiliates, and its service providers. If PayPal fails to include this required notice and/or fails to allow its users to refuse such consent, we are concerned that consent is in fact a condition of purchase of PayPal's service and thus violates the Telephone Consumer Protection Act and could subject PayPal, its affiliates, and its service providers to penalties of up to \$16,000 per call or text message.⁶

Second, we direct your attention to the requirement that the written agreement must identify the specific telephone number(s) to which the consenting consumer gives his or her consent to be called or texted.⁷ A blanket User Agreement that purports to apply to "any telephone number that [consumers] have provided us or that we have otherwise obtained" does not meet the level of specificity required by law. Many consumers have more than one telephone line. Consumers have the right to choose on which line(s) they wish to receive telemarketing or advertising calls, if they elect to receive such calls at all.

Finally, the Commission has ruled that "should any question about the consent arise, the seller will bear the burden of demonstrating that a clear and conspicuous disclosure was provided and that unambiguous consent was obtained."⁸ We direct your attention to this statement because it underscores the importance of complying with federal law when structuring your agreements to collect the prior express written consent of consumers.

In light of these federal requirements, it is important that you, like any business, operate in the manner prescribed by the TCPA. If you have any questions about this matter, you may contact Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, at 202-418-1318.

Sincerely,



Travis LeBlanc
Chief
Enforcement Bureau

cc: John Muller, PayPal, Vice President, Payments Policy
Peter Rabinowitz, PayPal, Chief Privacy Officer
Ryan Marsh, PayPal, Director of Litigation

⁶ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b); see also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008); *Amendment Of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (2013).

⁷ See 47 C.F.R. § 64.1200(f)(8).

⁸ 2012 TCPA Report and Order, 27 FCC Rcd at 1844, para. 34.