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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Vincent Lucas,

*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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On Petition for Review of an Order of  
the Federal Communications Commission

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**BRIEF FOR RESPONDENTS**

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CASE BEING CONSIDERED FOR TREATMENT  
PURSUANT TO RULE 34(j) OF THE COURT'S RULES

Richard A. Powers  
*Acting Assistant  
Attorney General*

Daniel E. Haar  
Robert B. Nicholson  
Steven J. Mintz  
*Attorneys*

U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION  
950 Pennsylvania Ave. NW  
Washington, DC 20530

P. Michele Ellison  
*General Counsel*

Jacob M. Lewis  
*Deputy General Counsel*

Matthew J. Dunne  
*Counsel*

FEDERAL COMMUNICATIONS  
COMMISSION  
45 L Street NE  
Washington, DC 20554  
(202) 418-1740  
fcclitigation@fcc.gov

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**CERTIFICATE AS TO PARTIES, RULINGS,  
AND RELATED CASES**

(A) **Parties and Amici.** All parties appearing in this Court are listed in the Brief for Petitioner.

(B) **Rulings Under Review.** The petition for review challenges the following order of the Federal Communications Commission: Report & Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 35 FCC Rcd 15188 (2020), reprinted at JA\_\_\_-\_\_.

(C) **Related Cases.** The order under review has not previously been before this Court or any other court. Respondents are aware of no other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

## TABLE OF CONTENTS

	<b>Page</b>
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES .....	ii
TABLE OF AUTHORITIES .....	v
GLOSSARY .....	1
INTRODUCTION.....	2
JURISDICTIONAL STATEMENT .....	3
STATEMENT OF THE ISSUES .....	5
STATEMENT REGARDING ORAL ARGUMENT .....	6
PERTINENT STATUTES AND REGULATIONS .....	6
STATEMENT OF THE CASE.....	6
A.    The Telephone Consumer Protection Act and the Commercial Non-Telemarketing Exemption.....	6
B.    Debt Collection Calls.....	11
C.    Calls from Broadcasters.....	13
D.    The TRACED Act .....	15
E.    The <i>NPRM</i> .....	17
F.    The <i>Order</i> .....	18
STANDARD OF REVIEW .....	21
SUMMARY OF THE ARGUMENT.....	22
ARGUMENT.....	24
I.    THE FCC REASONABLY FOUND THE COMMERCIAL NON- TELEMARKETING EXEMPTION REMAINS IN THE PUBLIC INTEREST .....	24
II.   THE FCC DID NOT RE-OPEN CONSIDERATION OF ITS LONGSTANDING RULINGS THAT DEBT COLLECTION CALLS AND BROADCASTER CALLS ARE EXEMPT AS COMMERCIAL NON- TELEMARKETING CALLS .....	29
III.  THE EXEMPTION FOR DEBT COLLECTION IS REASONABLE.....	33
IV.  THE EXEMPTION FOR BROADCASTERS IS REASONABLE.....	37

**TABLE OF CONTENTS  
(continued)**

	<b>Page</b>
CONCLUSION .....	40
CERTIFICATE OF COMPLIANCE.....	41

## TABLE OF AUTHORITIES\*

### Cases

<i>All. for Safe, Efficient &amp; Competitive Truck Transp. v. Fed. Motor Carrier Safety Admin.</i> , 755 F.3d 946 (D.C. Cir. 2014).....	30, 33
<i>Am. Rd. &amp; Transp. Builders Ass’n v. E.P.A.</i> , 588 F.3d 1109 (D.C. Cir. 2009).....	30
<i>Chevron U.S.A. Inc. v. Nat’l Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984).....	22
<i>Clapper v. Amnesty Int’l USA</i> , 133 S. Ct. 1138 (2013) .....	39
<i>CTIA v. FCC</i> , 466 F.3d 105 (D.C. Cir. 2006) .....	30
<i>Kennecott Utah Copper Corp. v. Dep’t of Interior</i> , 88 F.3d 1191 (D.C. Cir. 1996) .....	30, 33
<i>Mazza v. Verizon Washington DC, Inc.</i> , 852 F.Supp.2d 28 (D.D.C. 2012).....	36
<i>Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	21
<i>Nat’l Cable &amp; Telecomms. Ass’n v. Brand X Internet Servs.</i> , 545 U.S. 967 (2005).....	22
<i>Nat’l Tel. Co-op. Ass’n v. FCC</i> , 563 F.3d 536 (D.C. Cir. 2009) .....	21
<i>New York Reg’l Interconnect, Inc. v. FERC</i> , 634 F.3d 581 (D.C. Cir. 2011).....	39
<i>NTCH, Inc. v. FCC</i> , 841 F.3d 497 (D.C. Cir. 2016) .....	21
<i>P &amp; V Enters. v. U.S. Army Corps of Eng’rs</i> , 516 F.3d 1021 (D.C. Cir. 2008).....	29, 30

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\* Authorities upon which we chiefly rely are marked with asterisks.

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<i>Pub. Citizen v. Nuclear Regulatory Comm’n</i> , 901 F.2d 147 (D.C. Cir. 1990).....	29
 <b>Statutes</b>	
15 U.S.C. § 1692d .....	36
28 U.S.C. § 2342 .....	3
28 U.S.C. § 2344 .....	29
47 U.S.C. § 227 .....	6
47 U.S.C. § 227(a)(5).....	37
47 U.S.C. § 227(b)(1)(A).....	7
47 U.S.C. § 227(b)(1)(B).....	2, 7
47 U.S.C. § 227(b)(2).....	7, 37
* 47 U.S.C. § 227(b)(2)(B) .....	8, 9, 26, 28
47 U.S.C. § 227(b)(2)(H) .....	17
47 U.S.C. § 227(c)(1)–(4).....	7
47 U.S.C. § 402(a).....	3, 29
Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019). 2, 15, 17	
* Telephone Consumer Protection Act of 1991, Pub. L. 102-243, 105 Stat. 2394 .....	2, 6, 7, 27, 28

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<b>Regulations</b>	
47 C.F.R. § 64.1200(a)(3)(iii) .....	35
47 C.F.R. § 64.1200(b)(2) .....	35
47 C.F.R. § 64.1200(b)(3) .....	35
47 C.F.R. § 64.1200(f)(1) .....	38
<b>Administrative Decisions</b>	
<i>Advanced Methods to Target and Eliminate Unlawful Robocalls,</i> 33 FCC Rcd 12024 (2018) .....	36
* <i>Rules &amp; Regulations Implementing the Telephone Consumer</i> <i>Protection Act of 1991, 18 FCC Rcd 14014 (2003) 14, 15, 30, 37, 38, 39</i>	
<i>Rules and Regulations Implementing the Telephone Consumer</i> <i>Protection Act of 1991, 17 FCC Rcd 17459 (2002) .....</i>	13
<i>Rules and Regulations Implementing the Telephone Consumer</i> <i>Protection Act of 1991, 27 FCC Rcd 1830 (2012) .....</i>	12
* <i>Rules and Regulations Implementing the Telephone Consumer</i> <i>Protection Act of 1991, 7 FCC Rcd 8752 (1992). 2, 8, 10, 11, 12, 13, 30,</i> <i>32</i>	
* <i>Telephone Consumer Protection Act of 1991, 7 FCC Rcd 2736</i> <i>(1992) .....</i>	9, 11, 12, 26, 35
<b>Legislative Materials</b>	
H. Rep. 116-173 (2019) .....	15, 16
S. Rep. 116-41 (2019) .....	15, 16, 28

## GLOSSARY

<b>1992 NPRM</b>	Notice of Proposed Rulemaking, <i>Telephone Consumer Protection Act of 1991</i> , 7 FCC Rcd 2736 (1992)
<b>1992 Order</b>	Order, <i>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</i> , 7 FCC Rcd 8752 (1992)
<b>2003 Order</b>	Order, <i>Rules &amp; Regulations Implementing the Telephone Consumer Protection Act of 1991</i> , 18 FCC Rcd. 14014 (2003)
<b>NPRM</b>	Notice of Proposed Rulemaking, <i>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</i> , 35 FCC Rcd 11186 (2020)
<b>Order</b>	Report & Order, <i>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</i> , 35 FCC Rcd 15188 (2020)
<b>TRACED Act</b>	Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019)



## INTRODUCTION

In the Telephone Consumer Protection Act of 1991, Pub. L. 102-243, 105 Stat. 2394, Congress forbade automated and prerecorded calls to residential telephone lines “unless the call is ... exempted by rule or order by the Commission.” 47 U.S.C. § 227(b)(1)(B). In 1992, the FCC exercised this authority to exempt “commercial non-telemarketing calls,” finding that calls that do not attempt to sell products or services “do not adversely affect the privacy interests of residential subscribers.” *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752, 8782, ¶60 (1992). The Commission found further that this exemption encompasses calls related to debt collection and, later, calls inviting listeners to listen to or watch free broadcast programming.

In 2019, Congress passed and the President signed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (“TRACED Act”), which among other things directs the FCC to ensure that its exemptions to the Telephone Consumer Protection Act are limited as to callers, called parties, and number.

In the *Order* on review, the FCC implemented the TRACED Act's requirements. It also found more generally that the exemption for commercial non-telemarketing calls remains in the public interest.

Mr. Lucas argues that the Commission erred and should instead have revoked the exemption and replaced it with narrower, subject-specific exemptions. But the FCC's findings that the exemption remains in the public interest was reasonable and supported by the record. Mr. Lucas also specifically challenges the agency's long-standing exemptions for debt-collection and broadcasting calls, but these arguments are time-barred, and in any case meritless. The agency reasonably balanced the interests of callers and the public, just as Congress intended.

### **JURISDICTIONAL STATEMENT**

The *Order* on review was released on December 30, 2020. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 35 FCC Rcd 15188 ("*Order*") (JA\_\_). A summary of the *Order* appeared in the Federal Register on February 25, 2021. Petitioner filed a petition for review on March 29, 2021. This Court has jurisdiction to review final orders of the FCC under 47 U.S.C. § 402(a) and 28 U.S.C. § 2342. However, as explained below, the Court lacks

jurisdiction over Petitioner's attempt to seek review of Commission rulings adopted in 1992 and 2003 exempting debt collection and certain broadcaster calls from the Telephone Consumer Protection Act, which were not reopened in the *Order* on review. In addition, Petitioner has not shown that he has standing to put forth his argument that the Commission's broadcaster call exemption effectively exempts calls from other callers, such as websites.

## STATEMENT OF THE ISSUES

1. Was the FCC's decision to retain the general exemption for commercial non-telemarketing calls, as amended in the *Order* to implement the TRACED Act's limitations, arbitrary, capricious, or otherwise unlawful?
2. Is Mr. Lucas' challenge to the agency's longstanding decisions to exempt from the Telephone Consumer Protection Act debt collection calls (adopted in 1992) and certain broadcaster calls (adopted in 2003) time-barred, or did the FCC instead reopen those decisions?
3. If reopened, was the agency's decision to retain the exemption for debt collection calls reasonable?
4. If reopened, has Mr. Lucas shown an injury from hypothetical future ramifications of the exemption for certain broadcaster calls, and if so, is the exemption reasonable?

## STATEMENT REGARDING ORAL ARGUMENT

Respondents agree with the Court's initial assessment that this case may be adequately evaluated on the briefs pursuant to Rule 34(j), though we stand ready to present argument if the Court would find it useful.

## PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the statutory addendum bound with this brief.

## STATEMENT OF THE CASE

### **A. The Telephone Consumer Protection Act and the Commercial Non-Telemarketing Exemption**

The Telephone Consumer Protection Act of 1991, Pub. L. 102-243, 105 Stat. 2394, codified as section 227 of the Communications Act, 47 U.S.C. § 227, regulates the use of telephones for marketing. Congress found that “[t]he use of the telephone to market goods and services,” that is, “telemarketing,” was increasingly pervasive, and that “[u]nrestricted telemarketing” “can be an intrusive invasion of privacy.” Pub. L. No. 102-243, §§ 2(1), 2(5), 105 Stat. at 2394.

Congress found “automated or prerecorded” calls particularly problematic. *Id.* § 2(12), 105 Stat. at 2394-95. It therefore prohibited several specific uses of automatic telephone dialing equipment and

prerecorded messages, 47 U.S.C. § 227(b)(1)(A), and directed the Commission to undertake a rulemaking to consider other mechanisms for protecting telephone subscribers' privacy, including "do-not-call" databases. 47 U.S.C. § 227(c)(1)–(4).

At the same time, Congress recognized that "privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices." Pub. L. No. 102-243, § 2(9), 105 Stat. at 2394. Congress found that the FCC "should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment." Pub. L. No. 102-243, §2(13), 105 Stat. at 2395. Thus, Congress declared it unlawful to "initiate any telephone call" to a residential line "using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is...exempted by rule or order by the Commission." 47 U.S.C. § 227(b)(1)(B).

Congress directed that the FCC "shall" implement the Act through regulations. 47 U.S.C. § 227(b)(2). In so doing, the agency is authorized

to exempt two types of calls: (1) “calls that are not made for a commercial purpose,” and (2) “such classes or categories of calls made for commercial purposes as the Commission determines” “will not adversely affect the privacy rights that this section is intended to protect” and “do not include the transmission of any unsolicited advertisement.” 47 U.S.C. § 227(b)(2)(B). This case focuses on the agency’s rules for the latter exemption: calls that are commercial, but that do not include an unsolicited advertisement and that do not undermine the privacy rights the Telephone Consumer Protection Act is intended to protect. The FCC and parties often refer to these as “commercial non-telemarketing calls.”

The FCC first implemented this provision in 1992. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752 (1992) (“1992 Order”). In the Notice of Proposed Rulemaking that led to that order, the agency observed that “[t]he overall intent of Section 227 is to protect consumers from unrestricted telemarketing, which can be an intrusive invasion of privacy,” but that “[i]t appears that there are many valuable uses to auto dialer messaging that do not necessarily fall within the intended scope of Section 227’s prohibitions.” *Telephone Consumer Protection Act of 1991*, 7 FCC Rcd

2736, 2737 ¶9 (1992) (“1992 NPRM”).<sup>1</sup> Thus, “[i]n keeping with [its] authority” under the Act, the Commission proposed “to exempt from liability categories of auto dialer calls that were not intended to be prohibited by the [Telephone Consumer Protection Act] and do not constitute a risk to public safety or an undue burden upon privacy interests.” *Ibid.*

In addition to non-commercial calls and calls from non-profit organizations, the FCC proposed to exempt “commercial messages that do not include the transmission of any unsolicited advertisement.” *Id.* ¶11. As the agency explained, “[s]ome messages, albeit commercial in nature, do not seek to sell a product or service and do not tread heavily upon privacy concerns.” *Ibid.* The agency cited examples of a large business that “advise[s] its employees of a late opening time due to weather,” a nationwide organization that “remind[s] members of an upcoming meeting or change in schedule,” and a delivery company that “confirm[s] the arrival, shipment or delivery date of a product to a customer.” *Ibid.* The agency observed that “[s]uch informational calls do

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<sup>1</sup> At that time, the Commission used the term “autodialer calls” to encompass prerecorded calls. *See id.* ¶9 (citing 47 U.S.C. § 227(b)(2)(B)).



not offer a product or service to the called party and are an efficient method to communicate a message to a large number of people.” *Ibid.*

The proceeding generated a large record, with comments from some 240 parties, including six consumer advocacy groups. *1992 Order*, 7 FCC Rcd at 8754, ¶4. The FCC “analyze[d] the costs and benefits associated with each of the alternatives for meeting the goals of the [Telephone Consumer Protection Act],” and adopted rules that “balance[d] the privacy concerns which the [Telephone Consumer Protection Act] seeks to protect, and the continued viability of beneficial and useful business services.” *Id.* ¶5. The Commission also “decline[d] to adopt definitions [that] fit only a narrow set of circumstances, in favor of broad definitions which best reflect legislative intent by accommodating the full range of telephone services and telemarketing practices.” *Id.* ¶6.

Based on this record, the FCC exempted prerecorded calls “made for commercial purposes which do not transmit an unsolicited advertisement.” *Id.* ¶5. The agency found the “the record demonstrate[d] that” these calls “do not adversely affect the privacy interests of residential subscribers.” *Id.* ¶60. As the agency explained when discussing an exemption for calls from non-profit entities, “the [Telephone Consumer Protection Act] seeks primarily to protect

subscribers from unrestricted commercial telemarketing activities.” *Id.* ¶40. Commenters therefore “generally support[ed]” the proposal to exempt commercial calls that do not entail telemarketing. *Id.* ¶28 (citing comments that “concur[red] that the restrictions set forth in the [Notice of Proposed Rulemaking] properly balance consumer privacy concerns and legitimate telemarketing practices”).

While some commenters argued that the rules “err[] on the side of protecting commercial speech and do[] not adequately protect telephone subscribers from invasions of privacy by telemarketers,” the agency found that “[t]he record support[ed its] conclusion that the proposed rules strike a reasonable balance between privacy rights, public safety interests, and commercial freedoms of speech and trade, which Congress cited as its paramount concern in enacting the [Telephone Consumer Protection Act].” *Id.* ¶57-58.

## **B. Debt Collection Calls**

In the *1992 NPRM*, the agency also sought comment on how to treat calls related to debt collection, such as calls that deliver a payment reminder to a customer. *1992 NPRM*, 7 FCC Rcd at 2738, ¶¶15-16. The agency emphasized that such calls “do not offer products or services” but “are indeed commercial in nature.” *Id.* ¶15. Because such a call “does not

convey an advertisement or solicitation and is not a ‘cold contact’ to a potential customer,” the agency tentatively concluded that it “does not adversely affect the privacy concerns the [Telephone Consumer Protection Act] seeks to protect,” and so should be exempted from section 227. *Id.* ¶16.

In the *1992 Order*, the FCC affirmed this conclusion, finding that these calls should be exempt from the Telephone Consumer Protection Act’s restrictions as “commercial calls which do not adversely affect privacy rights and which do not transmit an unsolicited advertisement.” *1992 Order*, 7 FCC Rcd at 8773, ¶39.<sup>2</sup> Commenters “generally support[ed]” this exemption. *Id.* ¶37; *see id.* n.68 (citing 10 groups commenting in favor). While one consumer group argued “that such an exemption would increase the potential for harassment,” others argued “that prerecorded message calls are the least intrusive means of debt

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<sup>2</sup> The FCC found the calls were also exempt under a separate rationale, as “calls from a party with whom the consumer has an established business relationship,” which was at that time a basis for exemption. *1992 Order*, 7 FCC Rcd at 8773, ¶39. The FCC has since eliminated that basis for exemption from the Telephone Consumer Protection Act. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, 1846-47, ¶¶39-43 (2012).

collection, and that elimination of this option could lead to higher transaction and loan servicing costs.” *Id.* ¶37.

Although several consumer advocacy groups participated in the 1992 rulemaking, no party petitioned for judicial review of any aspect of the order.

### **C. Calls from Broadcasters**

In April 2000, a member of the public asked the FCC to clarify the Commission’s exemption as it applied to prerecorded messages delivered by television and radio stations. The FCC addressed the request in a new rulemaking undertaken in 2002. *See* Notice of Proposed Rulemaking, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 17 FCC Red 17459 (2002). The Commission asked for public comment on issues related to the use of “prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or some similar opportunity.” *Id.* at ¶32. The Commission asked, “[W]hat rules might we adopt to appropriately balance consumers’ interest in restricting unsolicited advertising with commercial freedoms of speech?” *Ibid.*

Commenters argued both for and against a ban on these calls. Some commenters argued that calls from broadcasters are inherently commercial because the calls aim to increase the station's audience in order to become more attractive to advertisers. *See Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14101 n.498 (2003) (“*2003 Order*”) (summarizing comments). By contrast, the National Association of Broadcasters argued that “free over-the-air radio and television broadcasts are not consumer products or services that are bought and sold in commercial transactions,” and indeed “are by federal mandate available for free to every person within a station’s listening or viewing area.” Nat’l Ass’n of Broad. comments at 5.<sup>3</sup>

In the resulting *2003 Order*, the Commission agreed with the National Association of Broadcasters, and found that because broadcaster calls do not advertise the commercial availability or quality of a product or service, the calls are exempt as commercial non-telemarketing calls. *2003 Order*, 18 FCC Rcd. at 14100, ¶145.<sup>4</sup> Moreover,

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<sup>3</sup>Available at <https://ecfsapi.fcc.gov/file/6513396560.pdf>.

<sup>4</sup> By contrast, the FCC emphasized that calls that encouraged consumers to view or listen to programming for which they “must pay

the record showed that calls that encouraged tuning in to a broadcast “do not at this time warrant the adoption of new rules. Few commenters...described either receiving such messages or that they were particularly problematic,” *Ibid.*; *see id.* n.497 (the New York State Consumer Protection Board commented that it had not received any complaints regarding such calls).

#### **D. The TRACED Act**

In 2019, Congress passed and the President signed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (“TRACED Act”). The Senate and House Reports describe a concern that “[c]onsumers today are increasingly plagued by illegal robotic or prerecorded messages.” S. Rep. 116-41 (2019) at 2; *see* H. Rep. 116-173 (2019) at 11 (“Americans are receiving more unlawful robocalls than ever before.”). Although these calls were already illegal under the Telephone Consumer Protection Act as unsolicited telemarketing, Congress saw the need for more robust enforcement mechanisms.<sup>5</sup> As Congress recognized however, “not all

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(*e.g.*, cable, digital satellite, etc.), would be considered advertisements” subject to the restriction. *Id.* n.499.

<sup>5</sup> “The purpose of S. 151, the [TRACED] Act, is to aid the American public by helping to reduce illegal and unwanted robocalls by improving

robocalls are illegal or unwanted,” “[t]he majority of companies who use robocalls are legitimate companies,” and “valid robocalls can benefit consumers.” S. Rep. 116-14 at 2; *see* H. Rep. 116-176 at 11 (“The Congress or the FCC...have recognized that some calls provide significant benefits and therefore treats those differently....H.R. 3375 would not overturn these exemptions.”).

Section 8 of the TRACED ACT contains a new requirement, codified as part of section 227(b)(2), that the FCC “shall ensure that any exemption under” section 227(b)(2)(B)—that is, the section regarding commercial non-telemarketing calls—“contains requirements for calls made in reliance on the exemption with respect to—”:

- (i) the classes of parties that may make such calls;
- (ii) the classes of parties that may be called; and
- (iii) the number of such calls that a calling party may make to a particular called party.

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the ability of the [FCC] and law enforcement to impose additional penalties for intentional violations of the [Telephone Consumer Protection Act]. The bill also improves adoption of technical solutions for blocking illegal robocalls, and convenes a Federal interagency working group to combat the dramatic rise in such calls.” S. Rep. 116-41 at 1.

TRACED Act § 8(a) (codified at 47 U.S.C. § 227(b)(2)(H)). The law directs the FCC to implement section 8(a) no later than December 30, 2020. TRACED Act § 8(b).

### **E. The *NPRM***

On October 1, 2020, the FCC issued a Notice of Proposed Rulemaking, proposing “measures to implement section 8 of the TRACED Act and seek[ing] comment on how...best [to] implement it.” *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 35 FCC Rcd 11186, 11187, ¶2 (2020) (“*NPRM*”) (JA\_\_). “Specifically, as directed by the TRACED Act, [the FCC sought] to ensure that any exemption adopted pursuant to sections 227(b)(2)(B) or (C) includes requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.” *Ibid.*

The Commission observed that the exemption for commercial non-telemarketing calls “does not appear to specify the ‘classes of parties that may make’ such calls,” nor to have a limit on the number of calls to a party, but did “appear to specify the ‘classes of parties that may be called’ because the exemption applies only to residential telephone lines.” *Id.*



¶14 (JA\_\_). The FCC then sought “comment on these views and whether the exemption remains in the public interest.” *Ibid.*

The agency next sought “comment on how to amend this rule.” *Id.* ¶15 (JA\_\_). It proposed to define callers as either “informational” or “transactional” callers. *Ibid.* It then asked several questions about whether and how to limit the number of calls. *Ibid.* Finally, although not required by the TRACED Act, the agency proposed a requirement that consumers be able to opt out of exempt calls from a certain caller. *Ibid.* These regulations would require callers to inform consumers of a toll-free number to register a “do-not call request” that the caller must honor. *Id.* ¶13 (JA\_\_).

#### **F. The Order**

On December 30, 2020, the agency issued the *Order*. (JA\_\_).<sup>6</sup> The agency found, based on the record, that commercial non-telemarketing calls “should remain exempt from the [Telephone Consumer Protection Act] prohibitions as the record shows consumers generally want and expect them.” *Id.* ¶25 (JA\_\_) (citing comments). As the agency

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<sup>6</sup> We cite to the full *Order*, as released by the Commission and printed in the FCC Record. Mr. Lucas’s citations appear to be to the summary of the *Order* printed in the Federal Register.

summarized, “[m]ost commenters agree that the exemptions...should be preserved, arguing that such exempted calls deliver vital information for consumers.” *Id.* ¶9 & n.26 (JA\_\_) (summarizing supporting comments from six commenting organizations). For example, the exemption “benefits consumers by enabling businesses to communicate with their customers on important matters such as prescription refill reminders, power outage updates, and data security breaches.” *Id.* ¶25 & n.71 (JA\_\_).

One group of consumer-protection organizations—the National Consumer Law Center (NCLC), Consumer Federation of America, Consumer Reports, Electronic Privacy Center, and the National Association of Consumer Advocates—filed joint comments arguing for limits on the number of calls and for an opt-out mechanism, but did not dispute that the exemption as a whole remains in the public interest. *See* NCLC et al. comments (JA\_\_). Similarly, the Attorneys General of Mississippi and Michigan filed joint comments arguing for numerical limits, but did not dispute that the exemption as a whole is in the public interest. *See* Miss. & Mich. A.G. comments (JA\_\_)

Only Mr. Lucas argued that the exemption for commercial non-telemarketing calls should be “eliminate[d]” and “replace[d] with specific,

narrowly tailored exemptions.” *See* Lucas Comments 5 (JA\_\_). The FCC acknowledged Mr. Lucas’s views, *Order* ¶25 nn.71 & 73 (JA\_\_), but nevertheless “agree[d]” with the commenters who argued the calls should remain exempt. *Id.* ¶25 (JA\_\_).

The FCC next addressed the specific requirements of the TRACED Act. It defined the classes of callers that may make exempted calls as “those making calls for a commercial purpose where the call does not introduce an advertisement or constitute telemarketing.” *Id.* ¶26 (JA\_\_). It defined the class of called parties as consumers with residential phone lines, as proposed in the *NPRM*. *Id.* ¶27.

The agency also placed a new limit on the number of calls. Although many organizations objected to any limit, *id.* ¶9 (JA\_\_), the FCC’s new regulations “limit the number of calls that can be made pursuant to this exemption to three artificial or prerecorded voice calls within any consecutive 30-day period.” *Id.* ¶28 (JA\_\_). The agency incorporated its discussion of the same limit on noncommercial calls, *ibid.*, where it explained that the limit “reduces the number of intrusive or unwanted robocalls consumers receive at their homes,” and “ensure[s] that residential telephone users have reasonable safeguards from excessive exempted calls.” *Id.* ¶17 (JA\_\_).

Finally, the agency required callers to “allow recipients...to opt out of such calls using either of the mechanisms described” in its rules. *Id.* ¶29 (JA\_\_). As the agency explained regarding the same requirement for exempted noncommercial calls, the “opt-out mechanism will give consumers more say in how many calls they receive.” *Id.* ¶23 (JA\_\_).<sup>7</sup>

### STANDARD OF REVIEW

Mr. Lucas challenges the *Order* as arbitrary and capricious. Under this “highly deferential” standard, this Court presumes the validity of agency action. *E.g., Nat’l Tel. Co-op. Ass’n v. FCC*, 563 F.3d 536, 541 (D.C. Cir. 2009). The reviewing court “may not ‘substitute its judgment for that of the agency,’ but must instead evaluate whether the agency’s decision considered relevant factors and whether it reflects a clear error of judgment.” *NTCH, Inc. v. FCC*, 841 F.3d 497, 502 (D.C. Cir. 2016) (quoting *Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

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<sup>7</sup> The new limits on commercial non-telemarketing calls require approval from the Office of Management and Budget under the Paperwork Reduction Act of 1995 before they can go into effect. *Order* ¶¶51 & 58 (JA\_\_-\_\_). As of this writing, they have not yet received that approval and so have not yet gone into effect.

Mr. Lucas also argues that the agency has incorrectly interpreted the term “advertisement.” Br 23-24. Because the argument challenges the FCC’s interpretation of a statute that it administers, it is subject to review under the framework set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under this framework, “[i]f a statute is ambiguous, and if the implementing agency’s construction is reasonable, *Chevron* requires a federal court to accept the agency’s construction of the statute, even if the agency’s reading differs from what the court believes is the best statutory interpretation.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005).

### **SUMMARY OF THE ARGUMENT**

I. Mr. Lucas argues that the agency’s exemption from the Telephone Consumer Protection Act for prerecorded commercial non-telemarketing calls should be revoked and replaced with narrow, industry-specific exemptions. But, as we show, the FCC’s decision to retain the exemption was reasonable and supported by the record. Comments showed that callers and customers alike depend on these calls for cost-effective and efficient communication of important information. The Commission’s decision was all the more reasonable because the agency put in place a

new limit on the number of exempted calls and created a new right to opt out of the calls altogether, as recommended by consumer rights organizations and two state Attorneys General. The FCC's decision to retain the exemption under these circumstances was a reasonable exercise of the wide discretion Congress gave the agency to balance competing interests under the governing statutes.

II. Mr. Lucas also urged the Commission to reconsider its long-standing decisions that calls from debt collectors and certain calls from broadcasters are exempt. Because the agency did not reopen consideration of those rulings in the *Order* under review, those arguments are time-barred and should be dismissed.

III. Even if Mr. Lucas's challenge to the ruling that debt-collection calls are exempt were not time-barred, the agency acted reasonably in declining to reverse its position. The record here, like the record in the original rulemaking, showed that the calls provide important benefits to lenders and debtors, and debtors have every expectation that when they borrow money, they may receive calls from their lenders. Mr. Lucas complains that lenders may intentionally or unintentionally call persons who are not debtors when attempting to reach a debtor. But the Commission's newly-adopted rules limit the number of such calls and

provide a mechanism for recipients like Mr. Lucas to opt-out of such calls altogether.

IV. Mr. Lucas's challenge to the exemption for certain broadcaster calls likewise fails because it is time-barred, and because the agency reasonably exercised its discretion in 2003 when it found that calls that alert listeners to free broadcasts are not "commercial advertisements" within the meaning of the Telephone Consumer Protection Act and the agency's rules.

To the extent that Mr. Lucas argues that the exemption could immunize calls from non-broadcasters, including search engine and social media companies, he has not shown an imminent injury sufficient to support standing. He does not allege that he has ever received such a call and has failed to establish that any such calls would actually fall under the exemption.

## ARGUMENT

### I. THE FCC REASONABLY FOUND THE COMMERCIAL NON-TELEMARKETING EXEMPTION REMAINS IN THE PUBLIC INTEREST

The FCC's conclusion that commercial non-telemarketing calls "should remain exempt from the [Telephone Consumer Protection Act] prohibitions," *Order* ¶25 (JA\_\_), was reasonable and supported by the

record. Many commenters argued that the exemption “benefits consumers by enabling businesses to communicate with their customers on important matters such as prescription refill reminders, power outage updates, and data security breaches.” *Ibid.*; *see also id.* ¶9 & n.26 (JA\_\_) (citing evidence that “exempted calls deliver vital information for consumers”). For example, the record showed that bank “customers rely on these communications every day to protect their financial well-being” through “timely fraud alerts, low balance notifications, and important information regarding branch services.” Consumer Banking Ass’n comments at 1 (JA\_\_); *see also* Credit Union Nat’l Ass’n comments at 2-4 (JA\_\_) (exemption enhances credit unions’ ability to provide notices and information to customers). FedEx and other package delivery companies rely on the exemption to communicate with customers. FedEx comments at 9-10 (JA\_\_). And automated calling “increases the speed and reliability with which energy utilities can disseminate critical and potentially life-saving communications and decreases the costs associated with notifying customers.” Edison Elec. Inst. comments at 5 (JA\_\_).

Mr. Lucas was the only commenter who argued that the FCC should “eliminate the exemption” of commercial non-telemarketing calls “and replace it with specific, narrowly tailored exemptions.” Lucas



comments 1 (JA\_\_). And while he introduced an affidavit attesting that he considers commercial non-telemarketing calls “an enormous invasion of privacy,” *id.* 6 (JA\_\_), he did not introduce data showing that these views are widely held, or that most consumers regard these calls as invasive. Indeed, comments from consumer-protection organizations and two state Attorneys General argued for numerical limits on calls and opt-out mechanisms, but did not argue that the exemptions should be eliminated or that the existing exemption is arbitrary or unlawful. *See supra* p. 19.

The usefulness of these calls is relevant to a determination of whether exempted calls will “adversely affect the privacy rights that [Section 227] is intended to protect.” 47 U.S.C. § 227(b)(2)(B). Indeed, when the FCC first proposed to exempt certain automated calls, including commercial non-telemarketing calls, it discussed the “many valuable uses” of these calls “that do not necessarily fall within the intended scope of Section 227’s prohibitions,” and that “do not constitute...an undue burden upon privacy interests.” 1992 NPRM, 7 FCC Rcd at 2737, ¶9. Given the record demonstrating the benefits from commercial non-telemarketing calls in this proceeding, it was reasonable

for the Commission to agree with those who argued the exemption remains in the public interest. *Order* ¶25 & nn.71 & 73 (JA\_\_).

The conclusion was all the more sensible because the FCC, in implementing the TRACED Act, adopted new limits on the number of exempted calls allowed (three per 30-day period) and a new opt-out mechanism. *Order* ¶¶28-29 (JA\_\_-\_\_). As the agency explained, these measures will give consumers “reasonable safeguards from excessive exempted calls” and “more say in how many calls they receive.” *Id.* ¶¶17 & 23 (JA\_\_ & \_\_). If consumers do have concerns about commercial non-telemarketing calls, these new measures will provide limits and allow recipients to opt out of future calls altogether.

Mr. Lucas argues that the agency’s preservation of the exemption for commercial non-telemarketing calls is “contrary to legislative intent,” and that the findings of the Telephone Consumer Protection Act indicate “Congress thought that non-consensual automated or prerecorded calls are almost always a nuisance and an invasion of privacy.” Br. 27; *see* Pub. L. No. 102-243, § 2(10), 105 Stat. 2394 (evidence compiled by Congress “indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy”). But the full

findings of the Telephone Consumer Protection Act tell a different story. They recognize that privacy interests must be balanced against “legitimate telemarketing practices,” and that the FCC “should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy...consistent with the free speech protections embodied in the First Amendment of the Constitution.” Pub. L. No. 102-243, § 2(9) & (13), 105 Stat. 2394, 2395. That is why Congress authorized the agency to exempt commercial non-telemarketing calls that “the Commission determines” do not undermine the privacy rights that the section is intended to protect, “subject to such conditions as the Commission may prescribe.” 47 U.S.C. § 227(b)(2)(B).

Similarly, the TRACED Act addressed a concern that “[c]onsumers today are increasingly plagued by *illegal* robotic or prerecorded messages,” and Congress recognized that “not all robocalls are illegal or unwanted,” and “valid robocalls can benefit consumers.” S. Rep. 116-41 at 2 (emphasis added).

Thus, far from indicating that non-consensual, non-emergency prerecorded calls are “almost always a nuisance and an invasion of privacy” (Br. 27), Congress gave the agency wide discretion to regulate

commercial non-telemarketing calls to balance competing interests, in light of record evidence. The TRACED Act did not withdraw that authority, but simply directed the agency to implement additional protections to ensure its exemptions furthered the goals of the Telephone Consumer Protection Act. That is precisely what the agency did here.

## **II. THE FCC DID NOT RE-OPEN CONSIDERATION OF ITS LONGSTANDING RULINGS THAT DEBT COLLECTION CALLS AND BROADCASTER CALLS ARE EXEMPT AS COMMERCIAL NON-TELEMARKETING CALLS**

Insofar as Mr. Lucas seeks to challenge the FCC's construction of the commercial non-telemarketing exemption to include debt collection calls and certain broadcaster calls, his claims are time-barred.

It is well settled that parties must file a judicial challenge to an FCC order within 60 days of its publication. 47 U.S.C. § 402(a); 28 U.S.C. § 2344. Courts make an exception where an agency has “reopened” consideration of an existing rule. That doctrine “allows an otherwise stale challenge to proceed because ‘the agency opened the issue up anew,’ and then ‘reexamined...and reaffirmed its [prior] decision.’” *P & V Enters. v. U.S. Army Corps of Eng'rs*, 516 F.3d 1021, 1023 (D.C. Cir. 2008) (quoting *Pub. Citizen v. Nuclear Regulatory Comm'n*, 901 F.2d 147, 150–51 (D.C. Cir. 1990)). “The doctrine only applies, however, where the entire context

demonstrates that the agency has undertaken a serious, substantive reconsideration of the existing rule.” *All. for Safe, Efficient & Competitive Truck Transp. v. Fed. Motor Carrier Safety Admin.*, 755 F.3d 946, 954 (D.C. Cir. 2014) (quoting *P & V Enters.*, 516 F.3d at 1024).

Moreover, “an agency does not reopen a rulemaking or policy determination ‘merely by responding to an unsolicited comment by reaffirming its prior position,’ ” *CTIA v. FCC*, 466 F.3d 105, 110 (D.C. Cir. 2006) (quoting *Kennecott Utah Copper Corp. v. Dep’t of Interior*, 88 F.3d 1191, 1213 (D.C. Cir. 1996)), or “by responding to a comment that addresses a settled aspect of some matter, even if the agency had solicited comments on unsettled aspects of the same matter.” *Kennecott*, 88 F.3d at 1213. *See Am. Rd. & Transp. Builders Ass’n v. EPA*, 588 F.3d 1109, 1114 (D.C. Cir. 2009) (courts “rarely if ever” find an agency’s response to comments alone “sufficient” to reopen).

Mr. Lucas’s arguments directed at the debt collection and broadcaster exemptions thus are time-barred and should be dismissed. The FCC found that its exemption for commercial non-telemarketing calls includes debt collection in 1992 and certain broadcaster calls in 2003. *1992 Order*, 7 FCC Rcd at 8773, ¶39; *2003 Order*, 18 FCC Rcd. at 14100, ¶145. Mr. Lucas argues (Br. 11-12) that the FCC reopened

consideration of these rulings here because it asked whether the exemption for commercial non-telemarketing calls “remains in the public interest,” *NPRM* ¶14 (JA\_\_), considered comments on the topic, and then decided that commercial non-telemarketing calls should remain exempt “as the record shows consumers generally want and expect them,” *Order* ¶25 (JA).

This is insufficient to establish reopening of the debt collection and broadcaster exemptions. The Notice of Proposed Rulemaking did not mention either of these rulings. Instead, the Notice of Proposed Rulemaking was focused only on “measures to implement section 8 of the TRACED Act,” *NPRM* ¶2 (JA\_\_), and the TRACED Act likewise does not mention those exemptions.

Indeed, as the *Order* explains:

[S]ection 8 of the TRACED Act requires only that we ensure that any exemption adopted pursuant to sections 227(b)(2)(B) or (C) includes requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party. Our review of the [Telephone Consumer Protection Act] exemptions, therefore, is limited to these specific requirements. Several commenters, however, request amendments to various [Telephone Consumer Protection Act] exemptions for reasons that extend beyond the scope of section 8. Because these exceed the scope of the requirements the TRACED Act imposes, we do not address these requests herein.

*Order* ¶49 (JA\_\_).

To be sure, the FCC did ask whether the commercial non-telemarketing exemption as a whole remains in the public interest, *NPRM* ¶14 (JA\_\_), but without more, that does not imply that the agency sought to reconsider long-standing rulings that certain subtypes of calls fall within the general exemption. The agency also asked about how and whether to further define the class of callers and called parties under this exemption, *NPRM* ¶15 (JA\_\_), but this is not reasonably read as an invitation for comment on past rulings that particular lines of business, like debt collection and broadcasters, fall within the exemption. The Commission asked whether callers should be divided into informational and transactional callers, *ibid.*, categories presumably aimed at capturing all available calls that fall under the exemption. In other words, the agency remained focused on the exemption as a whole. When establishing the exemption originally, the agency “decline[d] to adopt definitions [that] fit only a narrow set of circumstances, in favor of broad definitions which best reflect legislative intent by accommodating the full range of telephone services and telemarketing practices.” *1992 Order*, 7 FCC Rcd at 8755, ¶6. So too here, the agency did not inquire about

narrow industry-specific carve-outs or seek to reconsider long-standing rulings regarding specific subcategories.

Nor did the agency reopen by citing Mr. Lucas's arguments that the existing exemption is overbroad. *Order* nn. 71 & 73 (JA\_\_). Again, an agency does not reopen "by responding to a comment that addresses a settled aspect of some matter, even if the agency had solicited comments on unsettled aspects of the same matter." *Kennecott*, 88 F.3d at 1213. Here, where the agency sought to implement the TRACED Act, "the entire context" of the rulemaking does not "demonstrate that the agency has undertaken a serious, substantive reconsideration of" its rulings regarding debt collection and broadcaster calls. *All. for Safe, Efficient & Competitive Truck Transp.*, 755 F.3d at 954. Thus, to the extent that Mr. Lucas argues that the agency erred by failing to carve out debt collection or broadcaster calls from the rule, his claims are time-barred and should be dismissed.

### **III. THE EXEMPTION FOR DEBT COLLECTION IS REASONABLE**

In any case, the agency acted reasonably when it left in place its 1992 decision that debt-collection calls fall within the commercial non-telemarketing exception. The record showed that automated calls continue to be important to debt collectors, and to provide benefits to call



recipients. For example, a debt collection trade association explained that the exemptions allows its members to “provide account updates, support customers seeking to work out payment options, secure fee waivers, learn about financial assistance policies and charity options, address borrower concerns, and effectuate payment deferrals.” ACA comments at 4 (JA\_\_).

Another debt collection company explained that automated calls allowed it to efficiently “open the lines of communication with customers” through a voice message, leading to a later call in which the company can “inform [customers] that we purchased their account, listen to their individual financial situation,...often...negotiate a flexible repayment plan, and give updates on payments received and the status of their account.” Encore comments at 2-3 (JA\_\_). The exempted calls, which can be “time-sensitive,” are thus often “highly valuable” to consumers. *Ibid.*

To be sure, the consumer protection advocates’ comments argued that prerecorded debt collection calls can be “invasive and annoying” and can “amount to a significant interference in the called party’s daily life.” NCLC comments at 7 (JA\_\_); *see* Br. 12-13 (citing comments). But, unlike Mr. Lucas, these groups did not argue that the exemption should be reconsidered and eliminated. Instead, they argued that the Commission should impose a numerical limit of three calls in 30 days to “protect

consumers.” NCLC comments at 8. They also “strongly support[ed] the Commission’s proposal” to require an opt-out mechanism from prerecorded calls, explaining that because exempted calls “could easily reach the wrong person,...it is important to give the recipient the right to make them stop.” *Id.* at 12 (JA\_\_).

Mr. Lucas argues that debt collection calls are as intrusive to privacy as telemarketing calls, citing examples of calls he received seeking a different debtor, or debts he disputed. Br. 13-14. He also argues that the agency erred in not defining the “classes of parties that may be called” to exclude calls to parties other than the debtor. *Id.* 13, 15. But any such calls are now limited in number, 47 C.F.R. § 64.1200(a)(3)(iii), and consumers like Mr. Lucas can opt out completely. *See* 47 C.F.R. § 64.1200(b)(2), (b)(3). Again, this was precisely the proposal made by consumer-protection organizations in this proceeding.

It was also reasonable for the Commission to treat debt collection calls differently from unsolicited telemarketing calls. As the Commission observed when it proposed to exempt debt collection calls in the *1992 NPRM*, a debt collection call “is not a ‘cold contact’ to a potential customer.” *1992 NPRM*, 7 FCC Rcd at 2738 ¶ 16. Unlike telemarketing calls, debtors can reasonably anticipate communications from their

lenders regarding their outstanding debts, and such calls are neither unexpected nor unwarranted.

Mr. Lucas complains that certain debt collection calls can be part of a campaign of harassment, Br. 12-13, and that debt collectors sometimes call persons who do not owe the debt at issue (as when a debtor's telephone has been re-assigned). Br. 13-14. But there are other federal statutes that govern debt collector practices. For example, the Fair Debt Collection Practices Act prohibits debt collectors from "engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. *See Mazza v. Verizon Washington DC, Inc.*, 852 F.Supp.2d 28, 36 (D.D.C. 2012). And the Commission has sought to address the problem of robocalls to reassigned numbers by establishing a national database containing reassigned number information from telephone companies that will enable callers (including debt collector callers) to verify whether a telephone number has been reassigned before calling that number. *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, 33 FCC Rcd 12024 (2018). *See also* [www.fcc.gov/reassigned-numbers-database](http://www.fcc.gov/reassigned-numbers-database). In light of these independent protections, it was reasonable for the FCC to retain the debt collection exemption.

In the end, even if Mr. Lucas's requests to exclude debt collection calls from the Commission's exception for commercial non-telemarketing calls were not time-barred, it was reasonable for the Commission to decline those requests in light of the record evidence of the benefits of the exemption and the additional safeguards the Commission established.

#### **IV. THE EXEMPTION FOR BROADCASTERS IS REASONABLE**

Mr. Lucas's challenge to the Commission's determination that calls to "invite a consumer to listen to or view a [free] broadcast" fall within the commercial non-telemarketing exemption, *2003 Order*, 18 FCC Rcd at 14100, ¶145, likewise fails even if not time-barred.

Mr. Lucas alleges the FCC acted beyond its authority in finding that calls from broadcasters are not advertisements. Br 22-24. But the agency was tasked with "prescrib[ing] regulations to implement" the Telephone Consumer Protection Act, including an exemption for commercial calls that "do not include the transmission of any unsolicited advertisement," "subject to such conditions as the Commission may prescribe." 47 U.S.C. § 227(b)(2). The Telephone Consumer Protection Act defines "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services" transmitted without permission. *Id.* § 227(a)(5). The FCC's regulations

likewise define “advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services.” 47 C.F.R. § 64.1200(f)(1).

The FCC reasonably concluded that broadcaster calls are not unsolicited advertising because they do not advertise the “commercial availability” of programming. *See 2003 Order*, 18 FCC Rcd at 14100, ¶145. As the National Association of Broadcasters explained in 2003, over-the-air radio and television broadcast programming is entirely free to the listener or viewer, and for that reason broadcasts are “not consumer products or services that are bought and sold in commercial transactions.” *See supra* p. 14. Consistent with this distinction, the Commission made clear that broadcasters who offer paid programming, such as cable or satellite content, do not fall under the exemption. *2003 Order*, 18 FCC Rcd at 14100, n.499.

Mr. Lucas argues that because broadcasters ultimately hope to increase their audience, and so make more money from advertisers, their calls necessarily advertise the “commercial availability” of programming. Br. 20. The agency considered and rejected that interpretation in favor of one that allows broadcasters to inform viewers of available free programming, while at the same time refusing to exempt calls that are

“part of an overall marketing campaign to encourage the purchase of goods or services.” *2003 Order*, 18 FCC Rcd at 14100, ¶ 145. The FCC’s reading also takes account of the fact that the record showed that such calls had not resulted in significant complaints from consumers. *See supra* p. 14.

Mr. Lucas does not appear to allege that the broadcaster calls themselves are problematic, but instead that the “reasoning” for the exemption “would apply to any business that provides its goods or services free of monetary cost to consumers,” such as internet search engine and social media companies. Br. 17-18.

These fears appear to be entirely theoretical. The *2003 Order* exempted certain calls from broadcasters; it did not speak to calls from search engines or social media companies. And while Mr. Lucas alleges he has received prerecorded calls from a radio broadcaster (Br. 9), he does not assert that he has ever received a call from a social media company or search engine provider.

“[A]llegations of possible future injury are not sufficient” to establish standing; a “threatened injury” must be “certainly impending.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013); *see New York Reg’l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011) (A

“theory [which] stacks speculation upon hypothetical upon speculation,...does not establish an ‘actual or imminent’ injury.”). Mr. Lucas has thus failed to show that he has standing to raise his claims that the Commission has exempted “any business that provides its goods or services free of monetary cost to consumers.” Br. 17.

### CONCLUSION

The petition for review should be denied.

Dated: August 30, 2021

Respectfully submitted,

/s/ Matthew J. Dunne

Richard A. Powers  
*Acting Assistant  
Attorney General*

P. Michele Ellison  
*General Counsel*  
Jacob M. Lewis  
*Deputy General Counsel*

Daniel E. Haar  
Robert B. Nicholson  
Steven J. Mintz  
*Attorneys*  
U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Matthew J. Dunne  
*Counsel*  
FEDERAL COMMUNICATIONS  
COMMISSION  
45 L Street NE  
Washington, DC 20554  
(202) 418-1740  
fcclitigation@fcc.gov

*Counsel for Respondent  
United States of America\**

*Counsel for Respondent Federal  
Communications Commission*

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\* Filed with consent pursuant to D.C. Circuit Rule 32(a)(2).

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/s/ Matthew J. Dunne  
Matthew J. Dunne  
*Counsel for Respondents*



**STATUTORY ADDENDUM**

## Statutory Addendum Contents

<b>47 U.S.C. § 227 .....</b>	<b>Add. 1</b>
<b>47 C.F.R. § 64.1200 .....</b>	<b>Add. 23</b>

**47 U.S.C. § 227****§ 227. Restrictions on use of telephone equipment****(a) Definitions**

As used in this section--

**(1)** The term “automatic telephone dialing system” means equipment which has the capacity--

**(A)** to store or produce telephone numbers to be called, using a random or sequential number generator; and

**(B)** to dial such numbers.

**(2)** The term “established business relationship”, for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that--

**(A)** such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

**(B)** an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).1

**(3)** The term “telephone facsimile machine” means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

**(4)** The term “telephone solicitation” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

**(5)** The term “unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or services which is

transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

**(b) Restrictions on use of automated telephone equipment**

**(1) Prohibitions**

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States--

**(A)** to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice--

**(i)** to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

**(ii)** to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

**(iii)** to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

**(B)** to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, or is exempted by rule or order by the Commission under paragraph (2)(B);

**(C)** to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless--

**(i)** the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through--

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005, if the sender possessed the facsimile machine number of the recipient before July 9, 2005; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

**(2) Regulations; exemptions and other provisions**

The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission--

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe--

**(i)** calls that are not made for a commercial purpose; and

**(ii)** such classes or categories of calls made for commercial purposes as the Commission determines--

**(I)** will not adversely affect the privacy rights that this section is intended to protect; and

**(II)** do not include the transmission of any unsolicited advertisement;

**(C)** may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect;

**(D)** shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if--

**(i)** the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

**(ii)** the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

**(iii)** the notice sets forth the requirements for a request under subparagraph (E);

**(iv)** the notice includes--

**(I)** a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

**(II)** a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the

unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

**(v)** the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

**(vi)** the notice complies with the requirements of subsection (d);

**(E)** shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if--

**(i)** the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

**(ii)** the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

**(iii)** the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

**(F)** may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only--

**(i)** by regulation issued after public notice and opportunity for public comment; and

**(ii)** if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements;

**(G)(i)** may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall--

**(I)** determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

**(II)** determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

**(III)** evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

**(IV)** determine whether with respect to small businesses, the costs would not be unduly burdensome; and

**(ii)** may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on July 9, 2005;

**(H)** may restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States; and



**(I)** shall ensure that any exemption under subparagraph (B) or (C) contains requirements for calls made in reliance on the exemption with respect to--

**(i)** the classes of parties that may make such calls;

**(ii)** the classes of parties that may be called; and

**(iii)** the number of such calls that a calling party may make to a particular called party.

**(3) Private right of action**

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

**(A)** an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

**(B)** an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

**(C)** both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

**(4) Civil forfeiture**

**(A) In general**

Any person that is determined by the Commission, in accordance with paragraph (3) or (4) of section 503(b) of this title, to have violated this subsection shall be liable to the United States for a forfeiture penalty pursuant to section 503(b)(1) of this title. Paragraph (5) of section 503(b) of this title shall not apply in the case of a violation of this subsection. A forfeiture penalty under this subparagraph shall be in addition to any other penalty provided for by this chapter. The amount of the forfeiture penalty determined under this subparagraph shall be determined in accordance with subparagraphs (A) through (F) of section 503(b)(2) of this title.

**(B) Violation with intent**

Any person that is determined by the Commission, in accordance with paragraph (3) or (4) of section 503(b) of this title, to have violated this subsection with the intent to cause such violation shall be liable to the United States for a forfeiture penalty pursuant to section 503(b)(1) of this title. Paragraph (5) of section 503(b) of this title shall not apply in the case of a violation of this subsection. A forfeiture penalty under this subparagraph shall be in addition to any other penalty provided for by this chapter. The amount of the forfeiture penalty determined under this subparagraph shall be equal to an amount determined in accordance with subparagraphs (A) through (F) of section 503(b)(2) of this title plus an additional penalty not to exceed \$10,000.

**(C) Recovery**

Any forfeiture penalty determined under subparagraph (A) or (B) shall be recoverable under section 504(a) of this title.

**(D) Procedure**

No forfeiture liability shall be determined under subparagraph (A) or (B) against any person unless such person receives the notice required by section 503(b)(3) of this title or section 503(b)(4) of this title.

**(E) Statute of limitations**

Notwithstanding paragraph (6) of section 503(b) of this title, no forfeiture penalty shall be determined or imposed against any person--

(i) under subparagraph (A) if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) under subparagraph (B) if the violation charged occurred more than 4 years prior to the date of issuance of the required notice or notice of apparent liability.

**(F) Rule of construction**

Notwithstanding any law to the contrary, the Commission may not determine or impose a forfeiture penalty on a person under both subparagraphs (A) and (B) based on the same conduct.

**(c) Protection of subscriber privacy rights****(1) Rulemaking proceeding required**

Within 120 days after December 20, 1991, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall--

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific "do not call" systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

## **(2) Regulations**

Not later than 9 months after December 20, 1991, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

## **(3) Use of database permitted**

The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for

purchase. If the Commission determines to require such a database, such regulations shall--

**(A)** specify a method by which the Commission will select an entity to administer such database;

**(B)** require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

**(C)** specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

**(D)** specify the methods by which such objections shall be collected and added to the database;

**(E)** prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

**(F)** prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

**(G)** specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

**(H)** specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

**(4) Considerations required for use of database method**

If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall--

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and--

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

**(5) Private right of action**

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State--

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

**(6) Relation to subsection (b)**

The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

**(d) Technical and procedural standards**

**(1) Prohibition**

It shall be unlawful for any person within the United States--

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent

and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

**(2) Telephone facsimile machines**

The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after December 20, 1991, clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

**(3) Artificial or prerecorded voice systems**

The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that--

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

**(e) Prohibition on provision of misleading or inaccurate caller identification information**

**(1) In general**

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

**(2) Protection for blocking caller identification information**

Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

### **(3) Regulations**

#### **(A) In general**

The Commission shall prescribe regulations to implement this subsection.

#### **(B) Content of regulations**

##### **(i) In general**

The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

##### **(ii) Specific exemption for law enforcement agencies or court orders**

The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with--

**(I)** any authorized activity of a law enforcement agency;  
or

**(II)** a court order that specifically authorizes the use of caller identification manipulation.

**(4) Repealed.** Pub.L. 115-141, Div. P, Title IV, § 402(i)(3), Mar. 23, 2018, 132 Stat. 1089

### **(5) Penalties**

#### **(A) Civil forfeiture**

##### **(i) In general**

Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) of this title, to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this chapter. The amount of the forfeiture



penalty determined under this paragraph shall not exceed \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

**(ii) Recovery**

Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a) of this title. Paragraph (5) of section 503(b) of this title shall not apply in the case of a violation of this subsection.

**(iii) Procedure**

No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) of this title or section 503(b)(4) of this title.

**(iv) 4-year statute of limitations**

No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 4 years prior to the date of issuance of the required notice or notice of apparent liability.

**(B) Criminal fine**

Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 of this title for such a violation. This subparagraph does not supersede the provisions of section 501 of this title relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

**(6) Enforcement by States**

**(A) In general**

The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as *parens patriae*, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have

been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

**(B) Notice**

The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

**(C) Authority to intervene**

Upon receiving the notice required by subparagraph (B), the Commission shall have the right--

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

**(D) Construction**

For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

**(E) Venue; service or process**

**(i) Venue**

An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of Title 28.

**(ii) Service of process**

In an action brought under subparagraph (A)--

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

**(II)** a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

**(7) Effect on other laws**

This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

**(8) Definitions**

For purposes of this subsection:

**(A) Caller identification information**

The term “caller identification information” means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a voice service or a text message sent using a text messaging service.

**(B) Caller identification service**

The term “caller identification service” means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a voice service or a text message sent using a text messaging service. Such term includes automatic number identification services.

**(C) Text message**

The term “Text message”--

**(i)** means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code;

**(ii)** includes a short message service (commonly referred to as “SMS”) message and a multimedia message service (commonly referred to as “MMS”) message; and

**(iii)** does not include--

**(I)** a real-time, two-way voice or video communication; or

(II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).

**(D) Text messaging service**

The term “text messaging service” means a service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.

**(E) Voice service**

The term “voice service”--

(i) means any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1); and

(ii) includes transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.

**(9) Limitation**

Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

**(f) Effect on State law**

**(1) State law not preempted**

Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits--

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

**(2) State use of databases**

If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

## **(g) Actions by States**

### **(1) Authority of States**

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

### **(2) Exclusive jurisdiction of Federal courts**

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

### **(3) Rights of Commission**

The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

### **(4) Venue; service of process**

Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

**(5) Investigatory powers**

For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

**(6) Effect on State court proceedings**

Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

**(7) Limitation**

Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

**(8) "Attorney general" defined**

As used in this subsection, the term "attorney general" means the chief legal officer of a State.

**(h) Annual report to Congress on robocalls and transmission of misleading or inaccurate caller identification information**

**(1) Report required**

Not later than 1 year after December 30, 2019, and annually thereafter, the Commission, after consultation with the Federal Trade Commission, shall submit to Congress a report regarding enforcement by the Commission of subsections (b), (c), (d), and (e) during the preceding calendar year.

**(2) Matters for inclusion**

Each report required by paragraph (1) shall include the following:

- (A)** The number of complaints received by the Commission during each of the preceding 5 calendar years, for each of the following categories:

**(i)** Complaints alleging that a consumer received a call in violation of subsection (b) or (c).

**(ii)** Complaints alleging that a consumer received a call in violation of the standards prescribed under subsection (d).

**(iii)** Complaints alleging that a consumer received a call in connection with which misleading or inaccurate caller identification information was transmitted in violation of subsection (e).

**(B)** The number of citations issued by the Commission pursuant to section 503(b) of this title during the preceding calendar year to enforce subsection (d), and details of each such citation.

**(C)** The number of notices of apparent liability issued by the Commission pursuant to section 503(b) of this title during the preceding calendar year to enforce subsections (b), (c), (d), and (e), and details of each such notice including any proposed forfeiture amount.

**(D)** The number of final orders imposing forfeiture penalties issued pursuant to section 503(b) of this title during the preceding calendar year to enforce such subsections, and details of each such order including the forfeiture imposed.

**(E)** The amount of forfeiture penalties or criminal fines collected, during the preceding calendar year, by the Commission or the Attorney General for violations of such subsections, and details of each case in which such a forfeiture penalty or criminal fine was collected.

**(F)** Proposals for reducing the number of calls made in violation of such subsections.

**(G)** An analysis of the contribution by providers of interconnected VoIP service and non-interconnected VoIP service that discount high-volume, unlawful, short-duration calls to the total number of calls made in violation of such subsections, and recommendations on how to address such contribution in order to decrease the total number of calls made in violation of such subsections.

**(3) No additional reporting required**

The Commission shall prepare the report required by paragraph (1) without requiring the provision of additional information from providers of

telecommunications service or voice service (as defined in section 227b(a) of this title).

**(i) Information sharing**

**(1) In general**

Not later than 18 months after December 30, 2019, the Commission shall prescribe regulations to establish a process that streamlines the ways in which a private entity may voluntarily share with the Commission information relating to--

(A) a call made or a text message sent in violation of subsection (b); or

(B) a call or text message for which misleading or inaccurate caller identification information was caused to be transmitted in violation of subsection (e).

**(2) Text message defined**

In this subsection, the term “text message” has the meaning given such term in subsection (e)(8).

**(j) Robocall blocking service**

**(1) In general**

Not later than 1 year after December 30, 2019, the Commission shall take a final agency action to ensure the robocall blocking services provided on an opt-out or opt-in basis pursuant to the Declaratory Ruling of the Commission in the matter of Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59; FCC 19-51; adopted on June 6, 2019)--

(A) are provided with transparency and effective redress options for both--

(i) consumers; and

(ii) callers; and

(B) are provided with no additional line item charge to consumers and no additional charge to callers for resolving complaints related to erroneously blocked calls; and

(C) make all reasonable efforts to avoid blocking emergency public safety calls.

**(2) Text message defined**



In this subsection, the term “text message” has the meaning given such term in subsection (e)(8).

**47 C.F.R. § 64.1200**  
**§ 64.1200 Delivery restrictions.**

(a) No person or entity may:

\* \* \*

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call;

(i) Is made for emergency purposes;

<Text of subsection (a)(3)(ii) effective until (date pending).>

(ii) Is not made for a commercial purpose;

<Text of subsection (a)(3)(ii) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(ii) Is not made for a commercial purpose and the caller makes no more than three calls within any consecutive 30–day period to the residential line and honors the called party's request to opt out of future calls as required in paragraphs (b) and (d) of this section;

<Text of subsection (a)(3)(iii) effective until (date pending).>

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing;

<Text of subsection (a)(3)(iii) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing and the caller makes no more than three calls within any consecutive 30–day period to the residential line and honors the called party's request to opt out of future calls as required in paragraphs (b) and (d) of this section;

<Text of subsection (a)(3)(iv) effective until (date pending).>

(iv) Is made by or on behalf of a tax-exempt nonprofit organization; or

<Text of subsection (a)(3)(iv) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(iv) Is made by or on behalf of a tax-exempt nonprofit organization and the caller makes no more than three calls within any consecutive 30-day period to the residential line and honors the called party's request to opt out of future calls as required in paragraphs (b) and (d) of this section; or

<Text of subsection (a)(3)(v) effective until (date pending).>

(v) Delivers a "health care" message made by, or on behalf of, a "covered entity" or its "business associate," as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

<Text of subsection (a)(3)(v) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(v) Delivers a "health care" message made by, or on behalf of, a "covered entity" or its "business associate," as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103, and the caller makes no more than one call per day to each patient's residential line, up to a maximum of three calls combined per week to each patient's residential line and honors the called party's request to opt out of future calls as required in paragraphs (b) and (d) of this section.

\* \* \*

(b) All artificial or prerecorded voice telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated;

<Text of subsection (b)(2) effective until (date pending).>

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges

exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; and

<Text of subsection (b)(2) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours; and

<Text of subsection (b)(3) effective until (date pending).>

(3) In every case where the artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii), provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism, must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call. When the artificial or prerecorded voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the seller's do-not-call list.

<Text of subsection (b)(3) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(3) In every case where the artificial or prerecorded-voice telephone message is made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or includes or introduces an advertisement or constitutes

telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. 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. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the caller's do-not-call list.

\* \* \*

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made

will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

<Text of subsection (d) delayed until announcement of effective date in the Federal Register. See 86 FR 11443.>

(d) No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel. Personnel engaged in making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or who are engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

(4) Identification of callers and telemarketers. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for 5 years from the time the request is made.