

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. The Telephone Consumer Protection Act (TCPA) restricts robocalls and robotexts, absent the prior express consent of the called party or a recognized exemption.<sup>1</sup> Over many years, the Commission has made clear that consumers have a right to decide which robocalls they wish to receive by exercising their ability to grant or revoke consent to receive such calls and texts. We initiate this proceeding to clarify and strengthen consumers’ ability to revoke consent to receive both robocalls and robotexts.<sup>2</sup> Doing so will also clarify callers’ obligations under the Commission’s rules to honor such requests in a timely manner.

2. The TCPA does not define prior express consent or otherwise provide guidance relating to how consumers may provide or revoke consent to receive robocalls. As a result, the Commission has clarified various issues surrounding consent to receive robocalls. In some instances, these clarifications are not explicitly reflected in the Commission’s rules. We propose to codify the Commission’s past guidance on prior express consent to make these requirements more apparent to callers and consumers. In addition, we propose to amend our rules to strengthen the ability of consumers to decide which robocalls and robotexts they wish to receive by exercising their right to grant and revoke consent to individual callers.

II. BACKGROUND

3. The TCPA prohibits initiating “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 a statutory exception applies or the call is “exempted by rule or order by the Commission

<sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA exempts from this prohibition calls made for emergency purposes. The Commission has also exercised its statutory authority to adopt certain exemptions from this prohibition. *See* 47 CFR § 64.1200(a)(3), (9).

<sup>2</sup> As discussed in more detail below, the Telephone Consumer Protection Act regulates any call made using an “automatic telephone dialing system” or an artificial or prerecorded voice. Any such call is considered a “robocall” or “robotext” for purposes of this proceeding. *See* 47 U.S.C. § 227(b)(1).

under [section 227(b)(2)(B)].”<sup>3</sup> The TCPA also prohibits, without the prior express consent of the called party, any call made using an automatic telephone dialing system or an artificial or prerecorded voice 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 a statutory exception applies.<sup>4</sup>

4. *Consent to Calls from Wireless Carriers.* In 1992, the Commission concluded that wireless carriers need not obtain “additional consent” from their own subscribers prior to initiating autodialed or artificial or prerecorded voice calls to those subscribers because such calls are not charged to the called party.<sup>5</sup> In 2019, two petitioners sought a ruling that wireless subscribers can stop robocalls and robotexts from their wireless service provider by making a request to revoke consent to their service provider.<sup>6</sup> These petitions are still pending before the Commission.

5. *Opt-out Confirmation Texts.* In 2012, the Commission ruled that sending a one-time text message confirming a consumer’s request that no further text messages be sent from that sender does not violate the TCPA if the confirmation text complies with certain specific limitations, including that it not contain any marketing.<sup>7</sup> In 2019, Capital One filed a petition requesting a declaratory ruling that, if a sender receives an opt-out request from a text message recipient and the sender’s informational message was part of a program of several categories of informational messages in which the recipient had previously enrolled, then, pursuant to the Commission’s ruling in *Soundbite*, the sender may seek clarification in an opt-out confirmation message to the recipient regarding the scope of the recipient’s opt-out request without violating the TCPA.<sup>8</sup> Capital One notes that it sends customers a variety of different

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<sup>3</sup> 47 U.S.C. § 227(b)(1)(B). In the case of robocalls that introduce an advertisement or contain telemarketing, the Commission’s rules require that the caller obtain the prior express *written* consent of the called party. See 47 CFR § 64.1200(a)(2), (3).

<sup>4</sup> See 47 U.S.C. § 227(b)(1)(A)(iii). The Commission has confirmed that a text message is a “call” subject to the TCPA. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*); see also *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

<sup>5</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8774, para. 45 (1992) (*1992 TCPA Order*).

<sup>6</sup> See *Lucas Cranor Petition for Declaratory Ruling Requesting Order Granting That Consumers have the Right to Revoke Consent Under the Telephone Consumer Protection Act*, CG Docket No. 02-278 (filed Dec. 17, 2019) (arguing that “consumers have the right to revoke consent from receiving unwanted marketing text messages from their wireless providers at any time by any reasonable means; and that wireless providers must honor these revocation requests immediately”) (*Cranor Petition*); *Petition of Paul Armbruster for Declaratory Ruling Or Alternatively A Rulemaking Regarding A Consumer’s Absolute Right to Revoke Consent to Receive Unwanted Text Messages From Common Carriers*, CG Docket No. 02-278 (filed July 9, 2019) (requesting confirmation that a cellular phone customer can revoke consent to receive any and all unwanted text messages from their cell service provider) (*Armbruster Petition*).

<sup>7</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Soundbite Communications, Inc.*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391, 15394, para. 7 (2012) (*Soundbite Declaratory Ruling* or *Soundbite*).

<sup>8</sup> See *Capital One Services, LLC, Petition for Declaratory Ruling*, CG Docket Nos. 18-152 and 02-278 (filed Nov. 1, 2019) (arguing that, “if the sender of a lawful informational text message transmitted through an automatic telephone dialing system (‘ATDS’) receives a valid opt-out request from the recipient in response to that message, and that informational message was part of a program in which the recipient had previously enrolled that transmits several categories of informational messages, then, pursuant to the Commission’s ruling in *Soundbite*, the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient’s opt-out request without violating the [TCPA] or related Commission rules”) (*Capital One Petition*).

categories of informational text messages, including fraud alerts, payment response, low balance alerts, and overseas transaction alerts.<sup>9</sup> Capital One’s petition is still pending.

6. *Revocation of Consent.* In 2015, the Commission clarified that consumers who have provided prior express consent to receive autodialed or prerecorded calls may revoke such consent through any reasonable means.<sup>10</sup> Citing prior Commission rulings and the “well-established common law right to revoke prior consent,” the Commission concluded that the most reasonable interpretation of “prior express consent” in light of the TCPA’s consumer protection goals is “to permit a right of revocation.”<sup>11</sup> In so doing, the Commission indicated that “to allow callers to designate the exclusive means of revocation would, at least in some circumstances, materially impair that right.”<sup>12</sup> The Commission noted, for example, that if a caller receives a consumer’s valid oral consent for certain messages but requires the consumer to fax his or her revocation to the caller, perhaps with additional conditions, such conditions may materially diminish the consumer’s ability to revoke consent, “especially if disclosure of such conditions is not clear and conspicuous, and not repeated to the consumer with each message.”<sup>13</sup> As a result, the Commission concluded that a consumer “may revoke his or her consent in any reasonable manner that clearly expresses his or her desire not to receive further calls, and that the consumer is not limited to using only a revocation method that the caller has established as one that it will accept.”<sup>14</sup>

7. In 2016, Mobile Media Technologies (Mobile Media) filed a petition asking the Commission to clarify that the TCPA does not require a party transmitting a text message to create or make available to consumers a specific or particular method (such as bilateral text messaging, in which the consumer may revoke consent by replying “STOP”) by which a consumer may revoke prior express consent to be texted.<sup>15</sup> The Commission has not yet acted on this petition.

### III. DISCUSSION

8. We initiate this proceeding to clarify and strengthen consumers’ rights under the TCPA to grant and revoke consent to receive robocalls and robotexts. Specifically, we propose to: 1) ensure that revocation of consent does not require the use of specific words or burdensome methods; 2) require that callers honor do-not-call and consent revocation requests within a reasonable time, not to exceed 24 hours of receipt; 3) codify our previous decision that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity; and 4) allow wireless consumers the option to stop robocalls and robotexts from their own wireless service provider. As discussed below, we seek

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Report and Order, 30 FCC Rcd 7961, 7993-99, paras. 55-70 (2015) (*2015 TCPA Order*).

<sup>11</sup> *Id.* at 7994, 7997, paras. 57-58, 66 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *Junk Fax Prevention Act of 2005*; *Application for Review filed by Anda, Inc.*; *Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, 29 FCC Rcd 13998 (2014) (*Anda Order*); Restatement (Second) of Torts § 892A, cmt. i. (1979) (“consent is terminated when the actor knows or has reason to know that the other is no longer willing for him to continue the particular conduct”).

<sup>12</sup> *2015 TCPA Declaratory Ruling*, 30 FCC Rcd at 7997, para. 66.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 7998-99, para. 70.

<sup>15</sup> *See Petition of Mobile Media Technologies for Declaratory Ruling or, In the Alternative Retroactive Waiver*, CG Docket No. 02-278, WC Docket No. 07-135 (filed April 5, 2016).

comment on these proposals and on the costs and benefits of the proposals, including for smaller businesses and consumers.<sup>16</sup>

**A. Revoking Consent in Any Reasonable Way**

9. We propose to codify the Commission’s 2015 ruling confirming that consumers who have provided prior express consent to receive autodialed or prerecorded voice calls may revoke such consent through any reasonable means.<sup>17</sup> We believe this will make clearer to callers and consumers that a consumer has a right to revoke consent under the TCPA. Specifically, we propose codifying a rule that would make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as “stop,” “revoke,” “end,” or “opt out,” and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. We seek comment on this proposal.

10. Additionally, we propose to codify that reasonable methods to revoke consent typically include revocation requests made by text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller. We propose to codify that, when a consumer uses any such method to revoke consent, doing so creates a presumption that the consumer has revoked consent, absent evidence to the contrary. For example, the use of reply text messages is a reasonable and widely recognized means for text recipients to revoke prior consent to text messages. The sending of a “STOP” message in reply to an incoming text message is the standard recommended by industry groups such as the Mobile Marketing Association.<sup>18</sup> In addition, text messages may, on occasion, inadvertently be directed to reassigned or wrong numbers. In these instances, the text recipient may have no contact information other than the text itself, since the recipient is not the party that provided prior consent to the sender, and the only method they may have to contact the sender is with a reply text message.<sup>19</sup> Thus, we propose to codify that the sending of “STOP” or a similar message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way.<sup>20</sup> Should the text initiator choose to use a texting protocol that does not allow reply texts, we propose that it would bear the risk of potential liability under the TCPA unless it both provides a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol and clearly and conspicuously provides alternative ways for a consumer to revoke consent, such as a link or instructions to text a different number. We seek comment on these proposed rules.

11. We believe that these proposed rules are consistent with the Commission’s prior finding that placing significant burdens on the called party who no longer wishes to receive such calls or texts is inconsistent with the TCPA<sup>21</sup> and with our finding that the TCPA requires “only that the called party

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<sup>16</sup> To the extent that the Commission has previously sought comment on any of these issues, we incorporate by reference any comments that have been filed in response to such requests. Given the passage of time, however, we encourage commenters to update and refresh their prior comments as necessary.

<sup>17</sup> See *2015 TCPA Order*, 30 FCC Rcd at 7993-99, paras. 55-70 (noting that, “because the TCPA does not speak directly to the issue of revocation, the Commission can provide a reasonable construction of its terms”).

<sup>18</sup> See Mobile Marketing Association Best Practices at section 1.5-2; Biggerstaff Comments at 1-2.

<sup>19</sup> See, e.g., Biggerstaff Mobile Media Comments at 3-4.

<sup>20</sup> We note that, in response to the *Mobile Media Petition*, one commenter argued that the sending of a “STOP” message in reply to an incoming text is “the epitome of a ‘reasonable method’ of communicating to a sender to stop such messages and of revoking consent for future messages.” See Biggerstaff Mobile Media Comments at 1-3 (arguing that granting Mobile Media’s request would encourage text initiators to have unreliable response mechanisms for opt-out requests so that they can claim such requests were never received).

<sup>21</sup> See *2015 TCPA Order*, 30 FCC Rcd at 7997, para. 67.

clearly express his or her desire not to receive further calls” to invoke this right to revoke consent.<sup>22</sup> We seek comment on whether callers have encountered any difficulties in complying with this longstanding precedent that consumers can revoke consent via any reasonable method. Based on this experience, are there specific issues or circumstances that have arisen that we should address in the context of this proceeding to provide clarity as to the factors that make the means of revocation “reasonable” both from a consumer’s perspective and that of a caller? Have we struck an appropriate balance here between protecting the consumer’s privacy interests and facilitating the caller’s ability to process opt-out requests?

12. We also recognize that the scope of a “reasonable” means to revoke consent is not unlimited. We seek comment on any such limitations we should codify. What are the most common situations in which callers are unable to process opt-out requests from consumers? Are there ways that the Commission could address these situations in this proceeding consistent with our goal not to place an unreasonable burden on consumers to opt out of robocalls? We propose to codify that callers that do not believe that consumers have used a reasonable method to convey a request to revoke consent will be afforded an opportunity to rebut the presumption on a case-by-case basis, should a complaint be filed with the Commission or finder of fact. We seek comment on the types of evidence that would suffice to rebut the presumption. For example, if the consumer directs the request to a telephone number or email address, and the caller presents evidence that the consumer lacks a reasonable basis to expect that the request will be received by it, should we hold that such a method to revoke consent is not in fact reasonable? We believe such a rule would balance the consumer’s right to revoke consent in an easy and reasonable manner with the caller’s ability to process such revocation requests. We seek comment on this proposal, including any impact on small entities.

#### **B. Timeframe for Honoring a Do-Not-Call or Revocation Request**

13. We propose to require that, within 24 hours of receipt, callers must honor company-specific do-not-call and revocation-of-consent requests for robocalls and robotexts that are subject to the TCPA. The Commission’s rules currently provide no specific timeframes for honoring revocation-of-consent requests for robocalls and robotexts made to residential or wireless telephone numbers. The Commission’s rules currently require callers making telemarketing calls or exempted artificial and prerecorded voice calls to residential telephone numbers and exempted package delivery calls and texts to wireless consumers to honor do-not-call requests within a reasonable time not to exceed 30 days from the date of any such request.<sup>23</sup> This proposal will require amending those existing rules<sup>24</sup> and establishing new rules where no specific timeframe for honoring such requests currently exists.<sup>25</sup> We seek comment on this proposal, including on the 24-hour period. Is this period reasonable? Should we, rather, require that revocations be honored immediately upon receipt or consider some other timeframe?

14. Consumers are understandably frustrated when they receive robocalls and robotext messages days or even weeks following a request to stop such communications. Such delays also undermine a consumer’s right to determine which robocalls and robotexts they wish to receive under the privacy protections afforded by the TCPA. In addition, we believe that advances in technology over the years, including automated and interactive technologies, have made the processing of do-not-call and consent revocation requests more efficient and timely than in the past.<sup>26</sup> We believe that such

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<sup>22</sup> *Id.*

<sup>23</sup> See 47 CFR § 64.1200(a)(9)(i), (d)(3).

<sup>24</sup> *Id.*

<sup>25</sup> See 47 CFR § 64.1200(a)(1)-(3).

<sup>26</sup> As discussed in more detail below, the Commission has in most instances conditioned the use of an exemption on honoring opt-out requests “immediately.” Although this condition has been imposed for many years, there is no indication that compliance in that timeframe has not been possible using current technology.

technological advances provide callers and senders of text messages with the tools they need to process all do-not-call and consent revocation requests in near real time. We seek comment on these beliefs.

15. Consistent with the conditions imposed on other calls to wireless telephone numbers that are exempt from the prior -express-consent requirement, we also propose to amend our rules for exempted package delivery calls to require that such callers honor an opt-out request immediately.<sup>27</sup> This proposal will place such callers on an equal footing with other categories of callers that have been granted an exemption to call wireless telephone numbers without prior express consent.<sup>28</sup> Alternatively, is there any reason that package delivery calls should continue to be treated differently from other exempted callers to allow for up to 30 days to honor an opt-out request? We believe these proposals will provide consumers with certainty that their do-not-call and consent revocation requests are honored in a timely manner, enhancing the ability of consumers to stop unwanted robocalls and robotexts. We seek comment on these proposals, including any burdens this may impose on callers, including small entities.

### C. Revocation Confirmation Text Message

16. We propose to codify the Commission's *Soundbite Declaratory Ruling* clarifying that a one-time text message confirming a consumer's request that no further text messages be sent does not violate the TCPA or the Commission's rules as long as the confirmation text merely confirms the called party's opt-out request and does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request.<sup>29</sup> In the *Soundbite Declaratory Ruling*, the Commission noted that "confirmation messages ultimately benefit and protect consumers by helping to ensure, via such confirmation, that the consumer who ostensibly opted out in fact no longer wishes to receive text messages from entities from whom the consumer previously expressed an affirmative desire to receive such messages."<sup>30</sup> We believe that codifying this ruling will better ensure that both text senders and recipients are aware of it, including the limitations imposed on such one-time confirmation text messages. We seek comment on our proposal. In the time since it went into effect, have callers or consumers encountered any issues not addressed in the *Soundbite Declaratory Ruling*?

17. We also propose to codify that senders can include a request for clarification in the one-time confirmation text, provided the sender ceases all further robocalls and robotexts absent an affirmative response from the consumer that they wish to receive further communications from the sender. We further propose that a lack of any response to the confirmation call or text must be treated by the sender as a revocation of consent for all robocalls and robotexts from the sender. We do so in response to Capital One's petition seeking confirmation that the text sender may request clarification in its one-time confirmation message of the scope of the recipient's revocation request when that recipient has consented to receiving multiple categories of informational messages from the sender.<sup>31</sup> We note that banks and financial institutions support Capital One's request, indicating that consumers often consent to receive multiple categories of informational messages and that opt-out requests in these situations can be ambiguous as to whether the request applies to all or just certain types of those messages.<sup>32</sup> Consumer

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<sup>27</sup> See 47 CFR § 64.1200(a)(9)(i). As noted, the Commission has conditioned all other categories of exempted calls to wireless telephone numbers on honoring opt-out requests "immediately." See 47 CFR § 64.1200(a)(9)(ii)-(iv).

<sup>28</sup> See 47 CFR § 64.1200(a)(9)(ii)-(iv).

<sup>29</sup> See *Soundbite Declaratory Ruling*, 27 FCC Rcd at 15394-98, paras. 7-12 (noting that the sending of such confirmation text messages is a widespread practice that often benefits consumers).

<sup>30</sup> *Id.* at 15396, para. 10.

<sup>31</sup> As an example, Capital One notes that, if it were to send a text message about a declined card transaction to which the recipient responded with "stop," it would be unclear whether the customer is requesting to opt out of all messages including payment due notices and suspected fraud alerts, or only card decline notices. See *Capital One Petition* at 3.

<sup>32</sup> See, e.g., ACA Comments at 1-2; National Association of Federally-Insured Credit Unions at 1-2.

groups have also expressed support for Capital One's request, provided that a lack of any response to the confirmation text message must be interpreted by the sender to mean that the consumer's revocation request was intended to encompass all robocalls and robotexts and the sender must therefore cease all further robocalls and robotexts to that consumer absent further clarification from the consumer.<sup>33</sup> We seek further comment on any additional issues not fully addressed in the record.

18. Consistent with the *Soundbite Declaratory Ruling* and Capital One's request, we propose to codify that any such clarification message must not contain any marketing or advertising content or seek to persuade the recipient to reconsider their opt-out decision.<sup>34</sup> Rather, this proposed clarification is strictly limited to informing the recipient of the scope of the opt-out request absent some further confirmation from the consumer that they wish to continue receiving certain categories of text messages from the sender. We seek comment on this limitation.

19. We propose to emphasize that this confirmation text message is limited to a final *one-time* text message absent an affirmative response from the consumer that they wish to continue to receive certain categories of informational calls or text messages from the sender. We propose that, in the absence of any such affirmative response, no further robocalls or robotexts can be made to this consumer. In addition, we propose that a "STOP" text sent in response to the one-time request for confirmation does not then allow the text sender to send another request for further clarification. As noted above, both industry and consumer groups support this proposal.<sup>35</sup> Does the record fully address the views of all parties?

20. We seek comment on these proposals and any other related issues, such as any impact on smaller entities. Is this the appropriate limit to put on the clarification from the *Soundbite Declaratory Ruling*? Are there other limitations the Commission should impose to protect consumers' rights to opt out of text messages yet ensure callers' ability to correctly interpret consumers' intent in revoking consent? Should we instead decline to offer the clarification Capital One seeks?

#### **D. Wireless Carrier Calls to Subscribers**

21. We propose to require wireless providers to honor their customers' requests to cease autodialed, prerecorded voice, and artificial voice calls, and autodialed texts. To effectuate this change, we propose to alter our prior ruling to require wireless providers to subject such calls to certain conditions that protect the privacy interests of subscribers.<sup>36</sup>

22. In 1992, the Commission concluded that wireless carriers need not obtain consent prior to initiating autodialed, artificial voice, or prerecorded voice calls to their own subscribers because such communications were not charged to the called party.<sup>37</sup> Following this ruling, Congress amended the TCPA to grant the Commission express statutory authority to exempt from the prior-express-consent

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<sup>33</sup> See Consumer Reports Comments at 2; NCLC et al. Comments at 2.

<sup>34</sup> *Soundbite Declaratory Ruling*, 27 FCC Rcd at 15397, paras. 11-12; *Capital One Petition* at 2.

<sup>35</sup> See, e.g., ACA Comments at 1-2 (consumers can suffer harm if they inadvertently opt-out of legitimate business communications they may need); Consumer Reports Comments at 1 (agreeing that a follow-up message can be helpful for the consumer, who may not have intended to opt out of all categories of informational messages); National Association of Federally-Insured Credit Unions at 1-2 (such messages are not only common practice across industries, but they also offer a much-needed clarification for consumers who inadvertently submit an opt-out request or who want to opt out of specific messages but want to continue to receive other important, time-sensitive information); NCLC et al. Comments at 2.

<sup>36</sup> As discussed in further detail below, we propose to create an exemption for wireless providers pursuant to our authority under section 227(b)(2)(C). See 47 U.S.C. § 227(b)(2)(C). We note that any such exemption would strictly be limited to wireless providers that call or text their own subscribers and not extend to communicating with the subscribers of other wireless providers.

<sup>37</sup> See 1992 TCPA Order, 7 FCC Rcd at 8774, para. 45.

requirement calls to wireless numbers that are not charged to the called party *subject to* such conditions as the Commission deems necessary to protect the privacy rights afforded under the TCPA.<sup>38</sup> As a result, the ability of wireless carriers to call their own subscribers without prior express consent, where the consumer is not charged for the call, was based on the language of section 227(b)(1)(A)(iii) and was not a creation of a section 227(b)(2)(C) exemption; therefore, the Commission has not subjected this ability to conditions to protect the privacy rights of wireless subscribers that the Commission has imposed in other analogous situations where callers have been granted an exemption to make robocalls or send robotexts to wireless numbers without prior express consent.

23. This situation has created disagreements as to whether the Commission has authority to impose an opt-out requirement on communications from wireless service providers to their customers. Two wireless subscribers filed petitions seeking clarification that they can revoke consent to receive calls and messages from their wireless provider after such a request to stop such communications was denied by their wireless providers.<sup>39</sup> In response to requests for comments on these petitions, wireless providers and organizations opposed the relief sought, arguing that the TCPA's prohibitions do not apply to communications from wireless providers to their customers because there is no charge to the subscribers for calls and messages to them.<sup>40</sup> As a result, these commenters contend, there is no prior consent to be revoked because prior express consent is not required to make such calls under the TCPA. We seek comment on these considerations in the context of our proposed exemption.

24. We propose to revisit the 1992 ruling that “cellular carriers need not obtain additional consent from their cellular subscribers prior to initiating autodialer and artificial and prerecorded message calls for which the cellular subscriber is not charged.”<sup>41</sup> Instead of that blanket exemption for all wireless calls for which the subscriber is not charged, we propose to create and codify a qualified exemption—based on our authority under section 227(b)(2)(C)—for informational robocalls and robotexts from wireless providers to their subscribers. More specifically, those calls would be exempt from the prior-express-consent requirement if, and only if, certain conditions are satisfied.<sup>42</sup> As noted, the Commission has exercised this statutory authority to recognize certain limited exemptions in other analogous situations where such calls also are made without a charge to the called party.<sup>43</sup> We note that section 227(b)(2)(C)'s authority to grant exemptions from the prior-express-consent requirement is predicated on the ability of callers to make such calls with no charge to the consumer.<sup>44</sup> We believe that requirement would be meaningless if all such calls or texts were deemed to be wholly outside the prior express consent requirement merely because they were free to the end user, as some wireless providers have argued.<sup>45</sup> Consistent with section 227(b)(2)(C), which permits the Commission to impose such conditions it deems necessary in the interest of privacy,<sup>46</sup> we propose conditions that are similar to those the Commission imposed to protect the privacy interests of consumers in other situations where it has recognized an

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<sup>38</sup> See Telephone Disclosure and Dispute Resolution Act, Pub. L. No. 102-556, 106 Stat 4181 (1992); 47 U.S.C. § 227(b)(2)(C).

<sup>39</sup> See, e.g., *Armbruster Petition*; *Cranor Petition*.

<sup>40</sup> See, e.g., AT&T Armbruster Comments at 1-2; CTIA Armbruster Comments at 7-8.

<sup>41</sup> See *1992 TCPA Order*, 7 FCC Rcd at 8774, para. 45.

<sup>42</sup> See 47 U.S.C. § 227(b)(2)(C).

<sup>43</sup> See 47 CFR § 64.1200(a)(9) (creating exemptions for package delivery, financial services, inmate phone service providers, and certain healthcare callers subject to specific conditions including the ability of consumers to opt out from such robocalls or robotexts).

<sup>44</sup> See 47 U.S.C. § 227(b)(2)(C).

<sup>45</sup> See, e.g., AT&T Armbruster Comments at 1-2; CTIA Armbruster Comments at 7-8.

<sup>46</sup> See 47 U.S.C. § 227(b)(2)(C).



exemption from the prior-express-consent requirement for robocalls to wireless telephone numbers. The proposed conditions are as follows:

- (A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;
- (B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);
- (C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;
- (D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;
- (E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;
- (F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying “STOP”; and,
- (G) a wireless service provider must honor opt-out requests immediately.

25. We believe such an exemption, subject to the conditions imposed above, balances the privacy interests of the TCPA with the legitimate interests of wireless providers in communicating with their own subscribers. And because the TCPA only restricts calls initiated with an autodialer or using an artificial or prerecorded voice to a wireless telephone number, wireless providers can use a live agent or equipment that does not constitute an autodialer to make such calls or send texts without running afoul of the TCPA.<sup>47</sup> In addition, we propose that wireless providers have the option to obtain the prior express consent of their subscribers to avoid the need to rely on this exemption and its accompanying conditions, including the numerical limits imposed on such exempted calls.<sup>48</sup> We seek comment on these conditions. Are further conditions needed for calls from a wireless service provider to its subscribers? Alternatively, we seek comment on any benefits consumers receive from calls or messages that may be lost as a consequence of an opt-out or limit on the number of calls or messages sent. Are there any potential drawbacks for consumers to the conditions we have proposed?<sup>49</sup> If so, should we modify our proposed conditions to account for any such drawbacks?

26. Lastly, we believe such an exemption satisfies the obligations of section 8 of the TRACED Act.<sup>50</sup> Specifically, the class of parties that may make such exempted calls in these situations is

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<sup>47</sup> See 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

<sup>48</sup> We note that the Commission has confirmed that callers can obtain prior express consent to make informational calls either orally or in writing. See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100, 2022 WL 18023141, at 4, para. 12 (2022).

<sup>49</sup> See, e.g., Letter from Sarah Leggin, Assistant Vice President, CTIA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 2, 2023) (contending that the NPRM’s proposals with respect to calls and texts from wireless providers to their customers “would limit the ability of [wireless] consumers to receive important, time-sensitive information about their wireless service”).

<sup>50</sup> See Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (codified at 47 U.S.C. § 227(b)(2)(I)) (2019) (TRACED Act). As directed by the TRACED Act,

(continued...)

strictly limited to the wireless service provider. The class of parties that may be called is limited to an existing subscriber of a wireless service provider, and the number of such calls and messages is limited to three calls within any 30-day period. To the extent that there are any calls or texts that wireless service providers are mandated to make to their subscribers pursuant to any federal or state law, we seek comment on whether such calls or texts should not be counted toward the numerical limit of such communications that are imposed in the 30-day timeframe.<sup>51</sup> We seek comment on this proposal, including any burdens this proposal may impose on wireless providers, including small entities.

#### **E. Legal Authority**

27. We tentatively conclude that our legal authority for the proposed rules contained herein derives from sections 154 and 227 of the Communications Act of 1934, as amended (the Act).<sup>52</sup> We further propose to rely on our authority under section 8 of the TRACED Act to establish limitations on the proposed exemption for wireless providers from the TCPA's prior-express-consent requirement. As discussed above, the Commission as the expert agency on the TCPA has addressed issues relating to prior express consent by robocall consumers on numerous occasions. We believe that these sources grant us sufficient authority to adopt the proposed rules contained herein, and we seek comment on this conclusion. Are there any other sources of legal authority we should rely on? Do any of these sources of authority not apply to the rules we propose?

#### **F. Proposed Effective Date**

28. We propose that the rule changes set forth herein go into effect upon publication of an Order in the Federal Register, or for those rules that require OMB review under the Paperwork Reduction Act, upon OMB approval and publication of the notice of approval in the Federal Register. We seek comment on whether this proposed timeline provides a sufficient opportunity for affected parties to comply with any new requirements imposed by the proposed rules or whether a longer implementation period is warranted. We also seek comment on whether these effective dates should be the same for all affected parties, or whether we should provide more time for small entities to comply.

### **IV. PROCEDURAL MATTERS**

29. *Paperwork Reduction Act.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.<sup>53</sup> If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>54</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."<sup>55</sup>

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any exemption adopted pursuant to sections 227(b)(2)(B) or (C) must include 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.

<sup>51</sup> See, e.g., AT&T Armbruster Comments at 12 (noting that, in certain circumstances, wireless providers may be legally required to communicate certain information to their subscribers).

<sup>52</sup> See 47 U.S.C. §§ 154(i), (j) and 227.

<sup>53</sup> Pub. L. 104-13.

<sup>54</sup> Pub. L. 107-198.

<sup>55</sup> 44 U.S.C. § 3506(c)(4).

30. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>56</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>57</sup> Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

31. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>58</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

32. *Filing of Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>56</sup> 5 U.S.C. §§ 601-612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>57</sup> 5 U.S.C. § 605(b).

<sup>58</sup> 47 CFR §§ 1.1200 *et seq.*

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, D.C. 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

33. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

34. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

35. *Additional Information.* For additional information on this proceeding, contact Richard D. Smith, [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov) or (717) 338-2797, Consumer and Governmental Affairs Bureau, Consumer Policy Division.

## V. ORDERING CLAUSES

36. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 227, and section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, that this *Notice of Proposed Rulemaking* is hereby **ADOPTED**.

37. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

38. **IT IS FURTHER ORDERED** that the Commission's Office of Managing Director, Reference Information Center **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Draft Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend part 64 of Title 47 of the Code of Federal Regulations as follows:

## PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

## Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Section 64.1200 is amended by revising paragraph (a)(9)(i)(F) and adding paragraphs (a)(9)(v), (10), and (11) and revising paragraph (d)(3) to read as follows:

**§ 64.1200 Delivery Restrictions.**

\* \* \* \* \*

\* \* \*

(9) \* \* \*

(i) \* \* \*

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request **immediately**; and,

\* \* \* \* \*

(v) Calls made by a wireless service provider to an existing subscriber, provided that all of the following conditions are met:

(A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;

(B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);

(C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;

(D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;

(F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying “STOP”; and,

(G) a wireless service provider must honor opt-out requests immediately.

\* \* \* \* \*

(10) A called party may revoke prior express consent, including prior express written consent, to receive calls or text messages made pursuant to paragraphs (a)(1) through (3) of this section by using any reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender. The use of text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller to revoke consent creates a rebuttable presumption that the consumer has revoked consent absent evidence to the contrary. The sending of “STOP” or a similar text message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way. Callers or senders of text messages covered by paragraphs (a)(1) through (3) of this section may not designate an exclusive means to request revocation of consent. Should the text initiator choose to use a texting protocol that does not allow reply texts, it must provide a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol, and clearly and conspicuously provide reasonable alternative ways to revoke consent. All requests to revoke prior express consent or prior express written consent made in any reasonable manner must be honored in a reasonable time not to exceed 24 hours from receipt of such request.

(11) A one-time text message confirming a request to revoke consent from receiving any further text messages does not violate paragraphs (a)(1) through (2) of this section as long as the confirmation text merely confirms the text recipient’s revocation request and does not include any marketing or promotional information, and is the only additional message sent to the called party after receipt of the revocation request. To the extent that the text recipient has consented to several categories of text messages from the text sender, the confirmation message may request clarification as to whether the revocation request was meant to encompass all such messages; the sender must cease all further texts absent further clarification that the recipient wishes to continue to receive certain text messages.

\* \* \* \* \*

(d) \* \* \*

(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 § 64.1200(a)(3)(ii) through (v) 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 **24 hours** from the **receipt** 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 § 64.1200(a)(3)(ii) through (v) 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.

\* \* \* \* \*

## APPENDIX B

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### **B. Need for, and Objectives of, the Proposed Rules**

2. The NPRM seeks comment on proposals to clarify and strengthen the right of consumers to grant or revoke consent to receive robocalls and robotexts under the TCPA.<sup>4</sup> Under the Telephone Consumer Protection Act of 1991 (TCPA), certain types of calls and texts may only be sent with the prior express consent of the called party.<sup>5</sup> The ability of consumers to exercise this right to provide or revoke consent is essential to protecting the privacy rights of consumers by allowing them to decide which callers may communicate with them via robocalls and robotexts.

3. The NPRM proposes to codify prior Commission rulings and adopt new requirements to ensure that the requirements relating to providing or revoking consent under the TCPA are clear to both callers and consumers. Specifically, the *NPRM* proposes to make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as “stop,” “revoke,” “end,” or “opt out,” and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. The *NPRM* also proposes to require that callers honor do-not-call and revocation requests within a reasonable time not to exceed 24 hours of receipt. Further, the *NPRM* reiterates that consumers only need to revoke consent once to stop getting all calls and texts from a specific entity. It also proposes to codify that a one-time text message confirming a consumer’s request that no further text messages be sent does not violate the TCPA or the Commission’s rules as long as the confirmation text merely confirms the called party’s opt-out request, does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request.<sup>6</sup> Finally, the *NPRM* proposes to require wireless providers to honor a customer’s request to cease autodialed, prerecorded voice, and artificial voice calls, and automated texts..

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<sup>1</sup> 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> NPRM at paras. 9-26; *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act); TRACED Act § 8; Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227) (TCPA).

<sup>5</sup> *See* 47 U.S.C. § 227(b).

<sup>6</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Soundbite Communications, Inc.*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd at 15394-98, paras. 7-12.



### C. Legal Basis

4. The proposed rules are authorized under sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, and section 8 of the TRACED Act.

### D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>9</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>10</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.<sup>11</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>12</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>13</sup>

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>14</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>15</sup> Nationwide, for tax year 2020, there

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<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> *Id.* § 601(6).

<sup>9</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> 5 U.S.C. § 601(3)-(6).

<sup>12</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>16</sup>

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>18</sup> indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>19</sup> Of this number, there were 36,931 general purpose governments (county,<sup>20</sup> municipal, and town or township<sup>21</sup>) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts<sup>22</sup> with enrollment populations of less than 50,000.<sup>23</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>24</sup>

9. *Telemarketing Bureaus and Other Contact Centers.* This industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for

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<sup>16</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>17</sup> See 5 U.S.C. § 601(5).

<sup>18</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>19</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes Local Governments by Type and State\_2017.

<sup>20</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>21</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>22</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>23</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>24</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client's products or services.<sup>25</sup> These establishments do not own the product or provide the services they are representing on behalf of clients.<sup>26</sup> The SBA small business size standard for this industry classifies firms having \$16.5 million or less in annual receipts as small.<sup>27</sup> According to U.S. Census Bureau data for 2017, there were 2,250 firms in this industry that operated for the entire year.<sup>28</sup> Of this number 1,435 firms had revenue of less than \$10 million.<sup>29</sup> Based on this information, the majority of firms in this industry can be considered small under the SBA small business size standard.

10. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>30</sup> Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.<sup>31</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>32</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>33</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>34</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.<sup>35</sup> Of these providers, the Commission estimates that 511 providers have 1,500 or fewer

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<sup>25</sup> See U.S. Census Bureau, *2017 NAICS Definition, "561422 Telemarketing Bureaus and Other Contact Centers,"* <https://www.census.gov/naics/?input=561422&year=2017&details=561422>.

<sup>26</sup> *Id.*

<sup>27</sup> 13 CFR § 121.201, NAICS Code 561422.

<sup>28</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 561422, <https://data.census.gov/cedsci/table?y=2017&n=561422&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>29</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>31</sup> *Id.*

<sup>32</sup> 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>33</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>34</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>35</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

employees.<sup>36</sup> Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

11. In cases where consumers invoke their right to grant or revoke consent to small entity callers to receive robocalls and robotexts under the TCPA, these callers may need to implement new methods to record and track such requests to honor them within the specified timeframes. At this time however, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate additional relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

12. The RFA requires an agency to describe any significant alternatives, specifically small business alternatives, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>37</sup>

13. The *NPRM* specifically seeks comment on any costs or burdens imposed on callers to implement any of the proposals set forth in the *NPRM* which could help the Commission identify burdens for small entities and other actions that can be taken to minimize impact on small entities. For example, the *NPRM* proposes and seeks comment on what constitutes a “reasonable” manner to revoke consent, noting that it is not without limitation. An alternative consideration is whether callers will have an opportunity to demonstrate that a consumer has not used a reasonable means to convey their revocation of consent request. Allowing this flexibility may reduce the burden on small entities’ ability to respond to process revocation requests. The *NPRM* considers any compliance costs for small businesses if the proposed rules are adopted and seeks comment on ways to minimize any such burdens. The *NPRM* also proposes that callers must honor do-not-call and revocation requests within 24-hours, and seeks comment on whether other timeframes should be considered, including whether small entities may benefit from longer timeframes to implement these requests. Many of the requirements noted in the *NPRM* have been adopted by the Commission in rulings that date back many years. As a result, we anticipate that many callers have already made efforts to comply with these obligations and may have no new burdens.

14. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

**G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

15. None.

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<sup>36</sup> *Id.*

<sup>37</sup> 5 U.S.C. § 603(c)(1)-(4).

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG  
Docket No. 02-278, Notice of Proposed Rulemaking (June 8, 2023)

Consumers across the country want fewer junk robocalls and robotexts. I don't blame them. Because I'm a consumer myself. When my phone rings or buzzes with a call or text, I am just like everyone else and as Pavlov would predict, I instinctively reach for my device. But when that call or text is from someone I do not know reaching out to me with something I did not ask for and do not need, that instinct goes from interest to irritation in no time flat.

That is why at the Federal Communications Commission we are constantly looking for new ways to stop to illegal robocalls and robotexts. It is why today we are updating our policies under the Telephone Consumer Protection Act. This means we propose new rules that strengthen the ability of consumers to decide which robocalls and robotexts they receive. We want to make it clear that if you opt-out of this junk you shouldn't be forced to jump through hoops or say magic words. Then we want to make clear that those behind these calls and texts have 24 hours to honor your request.

This is progress. But the truth is we need new tools to curb these calls and texts. The Telephone Consumer Protection Act is more than three decades old. Stretching its language to capture millions of mobile devices that are always ringing and buzzing is not easy. But there are at least three ways additional authority from Congress could fix that.

First, the Supreme Court's recent decision in *Facebook v. Duguid* narrowed the definition of autodialer under the Telephone Consumer Protection Act. This decision makes it a harder for this agency to ensure the protections in this law cover the way so many scam artists now use technology to reach us with junk calls and texts.

Second, the agency needs clear authority to access Bank Secrecy Act information in order to help identify more quickly the financial records of our calling targets without giving those targets suspected of scams a heads up that we are coming for them.

Third, I believe it would be beneficial if the agency could try to collect the fines we impose against the bad actors responsible for robotexts and robocalls. Right now, our enforcement work ends when we issue a forfeiture order because we lack the authority to pursue collection in court without the Department of Justice. I'd like to change that.

For now, though, I want to thank the Robocall Response Team and staff responsible for our efforts today, including Alejandro Roark, Edyael Casaperalta, Mark Stone, Aaron Garza, Kristi Thornton, Karen Schroeder, and Richard Smith of the Consumer and Governmental Affairs Bureau; Kristi Thompson, Rakesh Patel, Daniel Stepanicich, Mary Romano, and Jane Van Benten of the Enforcement Bureau; Richard Mallen, Malena Barzilai, and Bill Richardson of the Office of General Counsel; Michelle Schaefer and Virginia Metallo of the Office of Economics and Analytics; and Joycelyn James of the Office of Communications Business Opportunities.