

**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)	

**COMMENTS OF ACA INTERNATIONAL
AND
THE CREDIT UNION NATIONAL ASSOCIATION**

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ACA International (“ACA”) and the Credit Union National Association (“CUNA”) submit these initial comments in response to the Federal Communications Commission’s (“Commission”) notice of proposed rulemaking regarding revocation of consent pursuant to the Telephone Consumer Protection Act (“TCPA”) and the Commission’s implementing regulations.¹ Members of ACA and CUNA undertake significant efforts to give consumer’s control of what messages they wish to receive and they make good faith efforts to honor revocation requests in a timely manner. ACA and CUNA support Commission efforts to prevent businesses from attempting to impose unreasonable revocation procedures as a way to hinder consumer preferences. Unfortunately, the Commission’s proposals, particularly its requirement that companies honor revocation requests within 24 hours for any and all future robocalls or robotexts, would create an unreasonable and impracticable standard that would result in unintended consumer harm and expose good faith actors to renewed flood of TCPA litigation.

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, FCC 23-49 (rel. June 9, 2023) (“Notice”).

I. Background and Summary

The Commission's 2015 TCPA Order clarified that consumers may revoke consent using any reasonable means and barred callers from designating the exclusive means of consent.² The Notice proposes to codify this requirement. The Notice also proposes to codify its "previous decision that consumers only need to revoke consent once to stop getting *all robocalls and robotexts* from a specific entity."³ The Commission, however, does not cite any previous decision where it has ruled that a single revocation stops everything. The Commission here seems to be creating a new regulation rather than codifying an existing ruling. Finally, and perhaps most critically, the Commission proposes to require callers to honor revocation requests within 24 hours of receipt. This is a dramatic departure from existing practice that, coupled with banning use of exclusive procedures and deeming the revocation to apply to all future robocalls and robotexts, creates an impracticable standard.

The Commission predicates its 24-hour rule on the use of automated systems to process revocation or opt out requests. Requests to revoke consent do not, however, always utilize automated systems and the Commission's rules will allow a number of different channels to submit such requests. Even where automated systems are used, they only work to quickly process requests when consumers utilize prescribed means, which the proposed rules would disallow. For example, text messages almost universally enable consumers to cancel further messages by texting STOP. If a consumer instead texts a word that the system is not programmed to recognize, or sends a phrase, sentence, or emoji, the requests will not be

² *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 (2015) ("2015 TCPA Order").

³ Notice para. 8 (emphasis added).

processed automatically. Finally, even if the consumer uses the prescribed method, the sender may process the revocation request only with respect to the category of information or channel of communication involved in the original message.

The proposed rule that a single revocation stops all future robocalls and robotexts requires coordination and communication throughout the enterprise and among the various third-party vendors a company may use for communications. The confluence of precluding exclusive means, an unlimited scope of revocation, and the 24-hour rule creates a standard that is impossible to meet in many cases, and at the very least creates compliance uncertainties. In contrast, the Commission's existing, codified framework provides callers sufficient time to process revocation requests that may not conform to prescribed methods and sufficient time to coordinate internally and among vendors as well as consumers to stop all contacts.

II. The Notice Fails to Explain Why Existing Requirements to Ensure Timely Action on Revocation Requests are Inadequate

The Notice proffers no explanation for why its existing regulatory framework regarding the timing of responses to revocation requests is insufficient. The Commission notes that some of its rules establish no time frame for honoring revocation requests while other rules require such action within a reasonable time not to exceed 30 days. With respect to the former, the Commission appears to be referring to section 64.1200(b), which codifies certain requirements for all artificial or prerecorded voice calls.⁴

Although this specific rule does not contain a time frame for honoring revocation requests, it does mandate that all such calls involving telemarketing must provide an “automated, interactive voice-and/or key press-activated opt-out mechanism for the called person to make a do-not-call request” that “must automatically record the called person’s number to the seller’s do-not-call

⁴ 47 C.F.R. § 64.1200(b).

list.”⁵ This requirement has also been extended to informational calls to residential lines.⁶ Thus, a significant percentage of robocalls require the caller to automatically place do-not-call requests on the company’s do-not-call list, which presumably would result in near real time cessation of such calls. Moreover, these rules are backstopped by the requirement that callers must maintain a company-specific do-not-call list and “must honor a residential subscriber’s do-not-call request within a reasonable time” not to exceed thirty days.⁷ The Notice fails to explain why these processes, when employed in good faith by companies, are insufficient to protect consumers.

The Commission’s rules also require that companies that make certain financial fraud or health-related calls that are exempt from prior consent must act on revocation requests immediately. Notably, where the Commission’s rules expressly require callers to act “immediately” on revocation requests, the rules also establish an exclusive means to revoke consent.⁸ The rules at least implicitly recognize that requiring near real time action on revocation requests is appropriate only where the caller can control the method of revocation, either by texting STOP or using an automated IVR. If the Commission intends to require a short

⁵ 47 C.F.R. § 64.1200(b)(3).

⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 35 FCC Rcd 15188, 15196, at paras. 22-23 (rel. Dec. 30, 2020) (“TCPA Exemptions Order”).

⁷ 47 C.F.R. § 64.1200(d)(3). The rule applies to calls to cell phones as well. *Id.* at § 64.1200(e). The Commission’s rules also require fax senders to honor revocation requests “within the shortest reasonable time” not to exceed thirty days. *Id.* at § 64.1200(a)(4)(v).

⁸ *Id.* at § 64.1200(a)(9)(iii)(G) & (iv)(G) (replying “STOP” to text messages “will be the exclusive means by which consumers may opt out of such messages.”) The exemption for package delivery calls or texts currently also requires an opt out option but does not require callers to honor opt out requests immediately and thus does not establish an exclusive means to revoke. Rather those callers must honor opt out requests “within a reasonable time” not to exceed thirty days. 47 C.F.R. § 64.1200(a)(9)(i)(F). The Commission proposes to revise this rule to require honoring package delivery opt out requests immediately but does not appear to establish replying STOP as the exclusive means to stop receiving further texts. It is unclear whether the Commission would bar financial institutions or health care providers from continuing to require use of STOP exclusively with respect to the exempted calls.

time frame for honoring requests, if must allow callers to specify the means for revocation, as long as those are reasonable and easy to use. Texting STOP is a prime example.

The Commission’s existing rules provide a sufficient framework by which good faith callers can, and do, honor revocation requests within a reasonable time. As set forth below, the Commission’s proposal to require all callers or text senders to honor revocation requests within 24 hours and have the single revocation request apply to “all [of the caller’s] robocalls or robotexts,” while enabling consumers to utilize any reasonable means as long it clearly expresses a desire to revoke, creates a perfect storm of compliance risk. The proposal fails to take into account the limitations of automated processes that the Commission invokes as justification for the 24-hour proposed rule. Moreover, the notice authorizes methods of revocation that are different from the channel of communication used to reach the consumer, further compounding the difficulty in honoring all revocation requests within 24 hours.

III. The Combination of Reasonable Means Revocation, Unlimited Scope of Revocation, and 24-Hour Compliance Creates an Impossible Standard

The Commission proposes to empower consumers to “revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including 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.”⁹ Reasonable methods 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.¹⁰ The Commission couples this requirement with a proposal to codify its previous decision “that consumers only need to revoke consent once to

⁹ Notice at para. 9. The Commission should make clear that posting a revocation request on social media is not presumptively a reasonable means of revocation.

¹⁰ *Id.* at para. 10.

stop getting *all* robocalls and robotexts from a specific entity.” Finally, callers would be required to honor a request, made by any reasonable means, to stop all communications to the consumer, within 24 hours.

The combination of requirements creates an obligation virtually impossible to meet in many cases and would expose callers acting in good faith to an onslaught of new TCPA litigation, particularly where consumers may deliberately use intentionally vague or obscure methods of revocation to create TCPA liability.¹¹ The Commission predicates its belief that a 24-hour time frame is reasonable by noting that “automated and interactive technologies” 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.”¹² While the use of automated processes can result in prompt removal of a number from further contact, at least for specific purposes, the Commission’s proposed rules are not limited to revocation requests using such processes. The Commission’s proposals create multiple concerns, as discussed below

A. The 24-Hour Deadline Does Not Provide Sufficient Time for Coordination

Companies often use multiple vendors to reach consumers and each vendor may be responsible for only certain types of messages. Similarly, companies are compartmentalized so that certain personnel and systems have responsibility for discrete types of communications. A large financial institution, for example, likely will have a business segment devoted to mortgage loans, another for car loans, another for deposit accounts and another for credit cards. In order for a single revocation request to stop “all robocalls or robotexts from a specific entity,” these

¹¹ See, e.g., *Rando v. Edible Arrangements, Int’l. LLC*, 2018 WL 1523858 at * 7 (D. New Jersey, March 28, 2018) (rather than reply STOP as instructed by the text message received, plaintiff repeatedly used verbose sentences, many of which did not even include the word “stop.”); *Epps v. Earth Force*, 2017 WL 1424637 at *5 (C.D. Cal. Feb. 27, 2017) (rather than reply stop, plaintiff used verbose sentences).

¹² Notice at para. 14. (emphasis added).

disparate groups may need to coordinate with each other as well as with all of their vendors. A revocation request processed by one vendor for one discrete business function must be relayed to the company, which in turn would need to signal to its other third-party vendors to stop future processes. All of this is likely to take longer than 24 hours, especially for revocation requests that utilize non-automated systems.

The coordination issues are further complicated by enabling consumers to use any one channel of communications to stop all channels of communication. For example, a consumer may send an email requesting that communications stop. Depending on the specificity of the request, the company must assess whether the consumer wants only emails to stop, or whether the request must be interpreted to also require stopping texts and/or phone calls. Similarly, a request to stop texts would appear, under the Commission's proposals, to also require cessation of phone calls. This requires coordination within the company and with third party vendors who handle different communications channels for different purposes.

Communication with the consumer may also be necessary to protect the consumer from inadvertently stopping important communications that the consumer may well want to continue.¹³ The consumer, for example, may not realize that the single revocation request might stop fraud alerts, or account balance alerts. All of this coordination and communication may well take more than 24 hours, especially if a revocation request is received late on a Friday or over a weekend or holiday. Mandating that all communications must stop within 24 hours likely would disserve the consumer who may not want to cancel all contacts.

¹³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391, 15396, para. 10 (2012) (“[T]ext messages can include important information relating to consumer’s bank accounts, credit cards, and other useful sources of information such as disaster alerts.”). (SoundBite Order).

A further problem arises when an entity is calling or texting on behalf of multiple companies. Third-party debt collectors, for example, may be communicating with a consumer in relation to two or more creditors. Although the third-party debt collector is the calling “entity,” it stands in the shoes of other parties. A revocation request from a consumer made in relation to a communication regarding a debt owed to company X should not be considered a revocation related to a debt owed to company Y, absent a clear direction from the consumer to cease communications regarding all debts owed regardless of the creditor. Requiring clear commands from a consumer in these circumstances strikes an appropriate balance in light of the role played by the third-party debt collector.¹⁴ Moreover, entities covered by the Fair Debt Collection Practices Act are already complying with specific requirements related to opt-outs for text messages in compliance with Regulation F.¹⁵

The foregoing highlights the difficulties created by the proposal requiring callers to treat one revocation request as applying to all robocalls or robotexts made or sent by the company, regardless of the subject of those communications. Layering an obligation to cease all robocalls and robotexts within 24 hours substantially compounds these difficulties.

B. The Commission’s Proposal Fails to Account for the Limitations of Automated Processes

The Commission’s proposals overstate the ability of automated systems to process revocation requests that do not correspond to the constraints built into those systems. Most automated texting platforms are programmed to recognize a limited set of “words” that trigger

¹⁴ See *e.g.*, *Michel v. Credit Protection Association LP*, 2017 WL 3620807 (N.D. Ill. 2017) (third party debt collector stands in the shoes of the creditor and revocation of consent with respect to one creditor does not revoke consent to be contacted on behalf of another creditor.)

¹⁵ See, *e.g.*, 12 C.F.R. § 1006.6(c)(1) (requiring debt collectors to honor requests to stop communications); *id.* at § 1006.6(e) (requiring debt collectors to “communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out” of future text messages).

the automated process to send an opt-out confirmation and place the consumer's number on a do-not-contact list. Industry best practices recommend consumers text "STOP" to signal that the text recipient does not want to receive further texts. Texting "STOP" is universally recognized as a request to stop sending further texts to the consumer's number and most platforms will automatically send a confirmation text and place the consumer's number on the company's do-not-call list, at least with respect to the category of information addressed in the text. Industry practices also tend to recognize a limited set of similar keywords that may automatically stop further texting, although the set is not necessarily uniform across all texting platforms. CTIA's best practices, for example, recommend that text senders recognize STOP, END, QUIT, CANCEL or UNSUBSCRIBE.¹⁶ The Mobile Marketing Association's best practice guide suggests a more limited set of key words – STOP, CANCEL, QUIT, or UNSUBSCRIBE.¹⁷ Consistent with those best practices, many platforms may also recognize and automatically act in response to these or a similarly limited set of keywords.¹⁸ Apart from a single, limited set of key words, many platforms are not programmed to recognize multiple words or sentences. Twilio,

¹⁶ CTIA, Messaging Principles and Best Practices, May 2023, at 12. <https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf>.

¹⁷ Mobile Marketing Association, U.S. Consumer Best Practices for Messaging, V. 7, October 2012, <https://www.mmaglobal.com/files/bestpractices.pdf> The Notice references the Mobile Marketing Association recommendation to use STOP as a standard way for consumers to opt out of future texts. Notice at para. 10. The Notice, however, strays far beyond this standard and would apparently allow consumers to use any combination of words or phrases as long they convey an intent to stop receiving messages.

¹⁸ See, e.g., CallHub, [Best Practices for managing message filtering and opt-out\(s\) – CallHub Customer Support](#) (programmed for STOP, REMOVE, UNSUBSCRIBE); Text-em-all [Opt Out | Text-Em-All](#) (STOP, QUIT, END, CANCEL, UNSUBSCRIBE, STOP ALL); Mogli [User Guide | SMS & WhatsApp Consent Opt-In & Opt-Out \(mogli.com\)](#) (STOP, QUIT UNSUBSCRIBE, OPT OUT, CANCEL); TextMagic [How can people opt in and opt out of my lists? | TextMagic](#) (STOP, STOPP STOPALL, UNSUBSCRIBE, END, or QUIT).

which provides software tools for texting, enables by default a similar set of keywords but is not capable, in default mode, of recognizing and responding to multiple words like “Please Stop.”¹⁹

If a consumer replies with a non-standard word or phrase that the platform is not programmed to recognize, the automated process cannot go forward. Instead, a further, often manual, process must be utilized. Thus, although a phrase such as “please do not send me any more texts” may seem reasonable in that it “clearly expresses a desire not to receive further calls or texts,” a request in this form likely will not be processed automatically, yet the sender would seemingly still be required to stop all future robocalls or robotexts within 24 hours.

As an example, consider the process utilized by a major provider of credit card fraud prevention services for credit unions and other financial institutions. The provider has an automated process for consumers that return a STOP command in response to a text related to credit cards, for example a text informing the consumer that his or her card was swiped at an overseas location. The company’s platform is programmed to recognize STOP, even if that word is used in a sentence, and will automatically send a confirmation text that the consumer has asked to stop receiving texts. The platform also automatically places the consumer’s number on a do-not-contact list.

There are limitations to this process, however. If a consumer responds with something other than “stop,” the company’s automatic responses are not triggered. Or, if the consumer asks to stop not just texts, but calls, the process does not work. Instead, these responses are transferred to the client financial institution in a batch delivery at the end of the day. The financial institution must then review the batch and determine what action to take. Moreover,

¹⁹ Twilio support for opt-out keywords (SMS STOP filtering) (“Only single-word messaging will trigger the block”), <https://support.twilio.com/hc/en-us/articles/223134027-Twilio-support-for-opt-out-keywords-SMS-STOP-filtering->.

even when the system automatically processes a STOP command, it will only stop texts being sent from the same number used to send the original message, and then only with respect to credit card-related matters. Stopping any other communications devolves to a manual process of review by each financial institution, a process that, despite good faith efforts, may not be completed within 24 hours.

The example above again highlights the difficulties of combining an exceedingly short deadline within which to honor revocation requests with an overly broad interpretation of the scope of the revocation request applying to all robocalls and robotexts emanating from or on behalf of “a specific entity.” As was noted above, a company may utilize various vendors to communicate with its consumers and each vendor may be responsible for only a discrete function of the company. Moreover, some vendors may only handle texting while another handles only calls, both using the same number. For a revocation request to reach beyond the specific functions handled by the third-party vendor, communication is required between each vendor and the business on whose behalf the vendor conveyed the message. Moreover, under the Commission’s rules a third-party vendor can only communicate a do-not-call request to its client, not to other third party vendors.²⁰ The Commission’s rules also limit the exchange of do-not-call requests with affiliated companies without express permission from the consumer.²¹ All

²⁰ See 47 C.F.R. § 64.1200(d)(3) (“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 of whose behalf a telemarketing call is made or an affiliated entity.”).

²¹ *Id.* at § 64.1200(d)(5) (“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 the affiliated entities unless the consumer would reasonably expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.”).

coordination to stop further robotexts and robocalls must flow through the company on whose behalf various vendors send messages.

C. The 24-Hour Rule Is Not Tied to Business Hours

The proposed 24-hour period by which to stop all robotexts and robocalls is not tied to business hours, further complicating compliance. Although receipt of a revocation request outside normal business hours may not create an issue where the request can be automatically processed, as described above, those processes either may not exist for certain types of communications, or the request may not utilize standard protocols recognized by the automated system. Requests that fall outside of automated processes must be manually reviewed. A request received on a weekend or holiday may not even be seen before the 24 period has run, let alone processed.

Should the Commission adopt a 24-hour rule (or other short time frame), the Commission should make clear that the 24-hour period does not include nights, weekends or holidays, but rather refers to 24 business hours. This is consistent with existing TCPA rules that require callers to provide a telephone number to call to make a do-not-call request “during regular business hours.”²² Other consumer statutes similarly tie deadlines to business hours or days. The CAN-SPAM Act, for example, requires companies sending commercial emails to honor opt out requests within ten *business* days.²³

IV. The Commission’s Proposal Will Cause Consumer Harm That Is Not Prevented by Enabling Sending a Single Clarification Text

The Commission’s proposed rules make no distinction between telemarketing calls or texts or informational calls or texts that often provide critically important information. Yet, the

²² See, e.g., 47 C.F.R. § 64.1200(a)(7) & (b)(2).

²³ 15 U.S.C. § 7704(a)(4).

Commission’s proposal would require financial institutions, health care providers, and utilities to stop all information robocalls or robotexts even if the consumer is making a revocation request in response to a solicitation from the same company. As one specific example of unintended consequences, access to online or mobile services are often predicated on the consumer’s agreement to receive authenticating calls or texts, such as two-factor authentication. The Commission’s proposed single-revocation-stops-everything rule could result in consumers losing access to these services.

The Commission’s proposal of allowing companies to seek clarification of the scope of the revocation request in the single text confirming revocation does not resolve these issues.²⁴ For one, the clarification text does not address calls or other means that may be used to revoke consent or where the called party only has a landline phone.²⁵ Moreover, sending the clarification text does not appear to toll the proposed 24-hour rule.²⁶ Callers are required to assume a single revocation applies to all robotexts and robocalls absent a further response from the consumer.²⁷ An additional complication lies in the Commission’s statement in the SoundBite order that the single confirmation text must be sent within 5 minutes of receipt of the revocation request.²⁸ Only where the opt-out text uses the suggested means, such as texting STOP, is it

²⁴ Notice at para. 17.

²⁵ Even if the Commission’s intent is for callers to send a confirmation text to confirm a call seeking to revoke consent, the text option is unavailing for traditional landline phones.

²⁶ Notice at para. 17 (the sender must cease “all further robocalls and robotexts absent an affirmative response from the consumer that they wish to receive further communication.”).

²⁷ *Id.* (“We propose that a lack of any response to the confirmation call or text must be treated by the sender as a revocation of all robocalls and robotexts from the sender.”).

²⁸ SoundBite Order at 27 FCC Rcd 15391, 15397, para. 11 (noting that if the confirmation text is sent within 5 minutes of the opt our request, it will be presumed to fall within the consumer’s prior express consent, otherwise the sender will have to make a showing that a longer period is reasonable and the longer it takes, the “more difficult it will be to demonstrate that such messages fall within the original prior consent.”)

possible to send a response within this time frame and including a clarification of the scope of the revocation is not possible in all circumstances.

V. The Commission Should Confirm That Callers May Specify Reasonable, Exclusive Means of Revocation by Contract

The Commission should confirm that businesses may contractually require a method of consent that cannot be unilaterally overturned by the consumer. The question of whether parties may, by mutual agreement, limit the means of revocation was not resolved in the Commission’s 2015 TCPA Order, as recognized in *ACA International v. FCC*.²⁹ There is thus not an existing ruling to be codified. The Commission should take this opportunity to confirm that parties may mutually agree on a method of revocation that will control as long as it is reasonable.³⁰

VI. The Commission Should Confirm that the Proposed Rules Only Apply When Consent is Required in the First Instance.

Although it should be clear from the language of the notice that providers that have granted consent may revoke it, the Commission should clarify that its specific restrictions regarding revocation only apply to communications that require prior consent in the first place pursuant to the TCPA and the Commission’s rules.³¹ Prior consent is only required for calls using a prerecorded or artificial voice and for calls or texts to cell phones using an automatic telephone dialing system (“ATDS”). In light of the Supreme Court’s unanimous interpretation of the TCPA’s definition of an ATDS in *Facebook*, most calls and automated texts today are not sent using an ATDS and hence prior consent is not required on that basis.

²⁹ *ACA International v. FCC*, 885 F.3d 687, 710 (D.C. Cir. 2018) (Noting that the Commission “correctly concedes” that the order “did not address whether contracting parties can select a particular revocation procedure by mutual agreement” and “[n]othing in the Commission’s order should be understood to speak to parties’ ability to agree upon revocation procedures.”). (Citing FCC brief).

³⁰ See e.g., *Thompson-Harbach v. USAA Federal Savings Bank*, 359 F. Supp.3d 606, 629-30 (N.D. Iowa 2019).

³¹ See Notice at para. 13 (proposing 24 hours to honor revocation request “for robocalls and robotexts *that are subject to the TCPA*”) (emphasis added).

Nevertheless, as the Commission recognized in the SoundBite Order, industry best practices mandate prior consent to send texts, even when the Commission’s rules do not require it, and they further require that all texts include an opt-out option.³² Failure to comply with these best practices may lead to texts being blocked. Thus texting platform providers routinely include opt-out language and, as described above, have developed automated mechanisms to accept specified opt-out replies. Many have consumer-facing platforms that offer the ability for consumers to control the types of texts they receive and revoke their consent immediately by changing their preferences. This framework is wholly outside of the Commission’s current regulatory framework in large part due to the Commission’s determination that texting is an information service. To the extent these texts do not require consent under the Commission’s rules, yet include an opt out option, they should not be subject to the Commission’s prescriptive rules regarding the method or scope of revocation or timing for honoring the revocation. Instead, the terms and methods of honoring opt-out requests should be left to industry best practices.

VII. The Commission’s Rules Should be Effective After Federal Register Publication.

The Notice proposes that the rules will become effective “upon publication of an Order in the Federal Register” or, if OMB approval is required, upon publication of such approval in the Federal Register.³³ Establishing an effective date upon Federal Register publication provides the public with no advanced notice of when rules will take effect as there is no way to know in advance when that publication will occur.³⁴ The Commission should instead provide that the rules will become effective at some designated period of time after Federal Register publication. In light of the dramatic departure from the existing regulatory regime and the potential

³² SoundBite Order, 27 FCC Rcd at 15392, para. 3.

³³ Notice at para. 28.

³⁴ The Federal Register does announce that a publication will occur on the following day, but one day’s notice is effectively no notice at all.

significant alteration of a company's internal and third-party vendor communications that the proposed rules may require, the Commission should provide that any rules adopted pursuant to the Notice will take effect eighteen (18) months after publication in the Federal Register.

VIII. The Commission Should Modify Its Proposal to Strike an Appropriate Balance Between Consumers and Callers

The Commission should not adopt its proposal to require callers to honor opt out requests within 24 hours. For all the reasons set forth above, this time frame is unrealistic. The Commission should reaffirm its existing rules regarding timing and methodologies for revocation. Alternatively, if the Commission concludes that the record supports a shorter time frame than its existing regulations provide, it should look to other models, such as the CAN-SPAM Act's requirement to honor opt out requests within 10 business days. At a minimum, any time frame it adopts less than the current 30 days should be based on regular business hours or days.

The Commission must set reasonable constraints around its single-revocation-stops-everything rule. The rule is unrealistic and may well result in more consumer harm than good. The Commission should instead require providers to honor opt out requests only with respect to the nature or purpose of the call or text to which revocation request responds. In doing so the Commission could make clear that a revocation request in response to a solicitation call or text requires ceasing all further telemarketing efforts. A revocation request should be so limited until such time as the caller receives clear direction from the consumer that he or she wants all robotexts or robocalls to stop, including alerts, two-factor authentication, appointment reminders or the like. The rules should not presume by default that the consumer wants important informational notifications to stop.

The Commission should also make clear that the revocation request applies only to the channel of communication through which the request is received, absent clear direction otherwise. Thus, a STOP reply to a text should be presumed to apply only to texts, not telephone calls, (and vice-versa) unless the consumer's request makes clear that all forms of communication should stop. A request to "stop all communications" sent through one channel would not be sufficiently clear absent further confirmation that the consumer wants to receive no calls, texts, emails or regular mail.

The Commission should place some limits around the rule that consumers may use any reasonable means to revoke consent and that the caller or text sender cannot specify an exclusive means of revocation. We appreciate that the goal of this requirement is to prevent businesses from imposing difficult or burdensome methods of revocation. The Commission's remedy, however, goes too far and precludes providers from requiring easy-to-use methods of revocation. A prime example is texting STOP or one of a small handful of similar commands commonly recognized in the texting ecosystem. Requiring consumers to utilize such a command creates no unreasonable burden on consumers and helps ensure that automated systems will capture and act on the request, including automatically placing the consumer's number on the do-not-contact list. The Commission should consider adopting a standard set of key words that must be used, consistent with current industry practices. At a minimum, the Commission should create a presumption that use of non-standard replies is not a reasonable means of revoking consent and relieves callers from honoring the request within 24 hours or a similar short time frame should the Commission adopt one.

CONCLUSION

For the reasons set forth above, ACA and CUNA respectfully urge the Commission to adopt reasonable limits on the method and scope of revocation and reject the proposed rule requiring callers to honor revocation requests within 24 hours.

Respectfully Submitted,

_____/s/
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