



February 5, 2024

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

This *ex parte* Notice relates to an email sent on February 2, 2024, by me to Carmen Scurato, legal counsel to Chairwoman Rosenworcel, as well as to the following staff of the Consumer and Governmental Affairs Bureau: Mika Savir, Jerusha Burnett, Kristi Thornton, Alejandro Roark, and Mark Stone. Additionally, I spoke with Carmen Scurato by telephone today to discuss this request.

The email indicated that it was written on behalf of the national consumer advocacy groups¹ who signed the joint consumer comments,² the reply comments,³ and attended a meeting,⁴ regarding the issues surrounding the FCC's Notice of Proposed Rulemaking on revocation of consent.⁵ In the email, I requested that the pending FNPRM on revocation of consent⁶ be amended to include a clarification of the regulations that we have repeatedly urged the FCC to make: that the requirement for calls that include an artificial or prerecorded voice must include an automated opt-out mechanism **should apply to all such calls**. As we read the current regulations at 47 CFR 64.1200(b)(3), that requirement is not clearly applicable to non-telemarketing calls to lines described in paragraphs (a)(1)(i) through (iii) of the regulations (covering cell phones).

This seems to be an oversight, as non-telemarketing calls prerecorded calls to residential lines require the automated opt-out, there is no logical reason that non-telemarketing calls to cell phones (or more precisely-- all lines listed in 47 C.F.R. 64.1200(a)(1)(i) through (iii)) should not also be required to include an automated opt-out mechanism.

¹ Applesseed, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, National Association of Consumer Advocates, National Association of Consumer Utility Advocates, National Consumers League, Public Knowledge, and U.S. PIRG.

² <https://www.fcc.gov/ecfs/document/10731199517166/1>.

³ <https://www.fcc.gov/ecfs/document/10808122419924/1> .

⁴ <https://www.fcc.gov/ecfs/document/1082945627318/1>.

⁵ <https://docs.fcc.gov/public/attachments/FCC-23-49A1.pdf> .

⁶ <https://docs.fcc.gov/public/attachments/DOC-400039A1.pdf>

Consumers complain about the seemingly unstoppable calls from some medical professionals, who place repeated prerecorded appointment reminder voice calls. When requested to stop the calls, many medical offices say that is not possible, that the calls are handled by an outside contractor and there is no mechanism to relay an individual's request. It is also a problem with debt collection calls, when there is often a dispute about whether the consumer requested that the calls stopped. Having the automated opt-out would avoid many of those arguments.

We respectfully request that the Commission pose an additional question in the pending FNPRM on revocation of consent regarding the advisability of amending section (b)(3) of the regulations to simply require an automated opt-out for all calls that include an artificial or prerecorded voice.

We propose the specific change to the regulation to accomplish this below in case that might be helpful.

The regulation should be amended as follows:

47 CFR 64.1200(b)(3):

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

We very much appreciate the FCC's consideration of this request.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104). This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you very much.

Sincerely,

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Ave, NW
Washington, D.C. 20036
www.nclc.org