



March 29, 2021

Marlene Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278

Dear Ms. Dortch:

On behalf of the low-income clients of the **National Consumer Law Center, and Consumer Federation of America, Consumer Reports, EPIC, NACA, and U.S. PIRG**, we write to express our appreciation for the new regulations limiting unwanted automated calls issued in late 2020 by the Commission. As required by the TRACED Act, these new regulations<sup>1</sup> limit the permitted number of calls using a prerecorded or artificial voice to residential lines that can be made under the exemptions previously issued by the Commission.<sup>2</sup> We particularly applaud the new limitations of only three unconsented-to prerecorded calls per month to residential lines, and the new requirement that every prerecorded call must include an automated, interactive voice, and/or a key press-activated opt-out mechanism for the called person to make a do-not-call request.<sup>3</sup>

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<sup>1</sup> Report and Order, Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, (2020) [hereinafter, 2020 Order]. The Order was issued implementing section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act. Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019), available at [https://ecfsapi.fcc.gov/file/1230701817809/FCC-20-186A1\\_Rcd.pdf](https://ecfsapi.fcc.gov/file/1230701817809/FCC-20-186A1_Rcd.pdf).

<sup>2</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 27 FCC Rcd 1830, ¶ 20 (2012) (requiring prior express written consent “for all telephone calls using an automatic telephone dialing system or a prerecorded voice to deliver a telemarketing message to wireless numbers and residential lines”),

<sup>3</sup> 2020 Order; 47 C.F.R. § 64.1200(a)(3)(i)-(iv).

However, according to the publication of the 2020 Order in the Federal Register, the limitations on these automated calls to residential landlines are “delayed indefinitely.”<sup>4</sup> We write to urge the Commission to act quickly to implement these regulations, or to take whatever action is necessary to remove the current delay, which will assist in the reduction of these unwanted calls to residential lines.

To expedite the implementation of these regulations, we also write to urge the Commission to correct the apparent error in the changed regulations (in 47 C.F.R. § 64.1200(a)(3)) that makes it appear that *written* consent is required for more than the specified number of calls made 1) for non-commercial purposes, 2) for commercial purposes that do not involve telemarketing, 3) by non-profit organizations, or 4) regarding certain health care purposes. Neither the Request for Comments, nor the Commission’s 2020 Order, made any mention of an intent to adopt a heightened standard for consent for these calls, and as such, it appears that the requirement for a writing is a “scrivener’s error” that can and should be easily rectified. The revision proposed by the American Bankers Association,<sup>5</sup> which would clarify that the requirement of written consent only applies to prerecorded *telemarketing* calls, appears to be consistent with the Commission’s intent.

We want to stress, however, that, as representatives of consumers continuing to be deluged with unwanted calls, we remain concerned about callers’ attempts to evade and abuse the existing consent requirements. We would welcome amendments to the requirements for consent for all automated calls to clarify for callers and called-parties alike the exact parameters of the consent provided for automated calls. There are a number of significant issues relating to consent (such as the scope of consent and clarifying the ability to revoke consent) for automated calls that we hope that the Commission will address in the coming months.

However, as the proceeding that led to the 2020 order did not raise the question of whether consent to automated calls to residential lines should be increased to require a writing, it appears that the current way the regulation reads is an error. As such, we urge the Commission to remedy that error as soon as possible.

If you have any questions about this matter, please contact me.

Thank you very much.

Sincerely,

Margot Saunders  
Senior Counsel  
National Consumer Law Center

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<sup>4</sup> 86 Fed. Register 11443, Feb. 25, 2021, *available at* <https://www.govinfo.gov/content/pkg/FR-2021-02-25/pdf/2021-01190.pdf>.

<sup>5</sup> *See e.g.* Notice of *Ex Parte* Presentation of American Bankers Association et al., CG Docket No. 02-278 (filed Feb. 23, 2021) *available at* [https://ecfsapi.fcc.gov/file/10128219934025/ABA\\_JointTrades\\_ExParteLetter\\_TCPA\\_Exemptions\\_Error\\_2021\\_01\\_27\\_final.pdf](https://ecfsapi.fcc.gov/file/10128219934025/ABA_JointTrades_ExParteLetter_TCPA_Exemptions_Error_2021_01_27_final.pdf); Notice of Written *Ex Parte* by USTelecom, CG Docket No. 02-278 (filed March 8, 2021), *available at* <https://ecfsapi.fcc.gov/file/1030967035072/USTelecom%20Ex%20Parte%20Letter%20re%20TCPA%20Limitations%20CG%20Dkt%20No%2002-278.pdf>.