

March 8, 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:

USTelecom – The Broadband Association (“USTelecom”) and its members are committed to protecting subscribers from illegal and unwanted robocalls while also ensuring that wanted calls are connected. Like any other entity that serves retail customers, voice service providers at times need to communicate with their customers about the service the customers receive, for example, to confirm a service appointment or warn customers about potential fraud on their account. Such non-telemarketing, informational calls generally are expected by, and directly benefit, those customers.

USTelecom therefore echoes the calls from the American Bankers Association *et al.* (the “Associations”) for an erratum to the Commission’s December 30, 2020 *TCPA Exemption Limits Order* regarding the type of consent required for prerecorded or artificial voice non-telemarketing, informational calls to residential numbers beyond the three permitted without consent in a consecutive 30-day period.<sup>1</sup> As the Associations explain, through earlier orders, the Commission exempted prerecorded and artificial informational voice calls to residential lines from the requirement for prior express consent under the Telephone Consumer Protection Act.<sup>2</sup> The Commission limited the number of calls to be placed under that exemption in the recent *TCPA Exemption Limits Order*,<sup>3</sup> but did not adopt, nor intend to adopt, a heightened consent for any excess informational calls – namely, the prior express *written* consent standard the Commission has applied exclusively to telemarketing calls.<sup>4</sup> Indeed, in first adopting that heightened standard, the Commission expressly found that applying it to all autodialed and

---

<sup>1</sup> *E.g.*, Notice of Ex Parte Presentation of American Bankers Association *et al.*, CG Docket No. 02-278 (filed Feb. 23, 2021) (“Associations Ex Parte”); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 35 FCC Rcd 15188 (2020) (“*TCPA Exemption Limits Order*”).

<sup>2</sup> Associations Ex Parte at 1.

<sup>3</sup> *Id.*; *TCPA Exemption Limits Order* ¶ 15.

<sup>4</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”) (emphasis added).

Ms. Marlene Dortch  
March 8, 2021  
Page 2

prerecorded calls, rather than just telemarketing ones, “would unnecessarily restrict consumer access to information communicated through purely informational calls.”<sup>5</sup>

Unfortunately, the manner in which the Commission amended section 64.1200(a)(3) of its rules appears to inadvertently (and inappropriately) impose the heightened prior express *written* consent requirement for prerecorded telemarketing calls on prerecorded informational calls that exceed three in a consecutive 30-day period.<sup>6</sup> There is no indication in the text of the *TCPA Exemption Limits Order* that the Commission intended to require that heightened standard, and instead substantial evidence to the contrary.<sup>7</sup>

To avoid inappropriately and “unnecessarily restrict[ing] consumer access to information communicated through purely informational calls” and to rectify this error, the Commission should move rapidly to issue an erratum that removes the word “written” from section 64.1200(a)(3) and adds a new paragraph regarding the consent requirement for prerecorded telemarketing calls to residential lines.<sup>8</sup>

Please contact the undersigned if you have any questions.

Sincerely,

/s/ Joshua M. Bercu/  
Joshua M. Bercu  
Vice President, Policy & Advocacy, USTelecom

---

<sup>5</sup> *Id.* ¶ 21.

<sup>6</sup> *See* Associations Ex Parte at 2.

<sup>7</sup> *E.g.*, *TCPA Exemption Limits Order* ¶ 20 (explaining that “callers can make more than three non-commercial calls using an artificial or prerecorded voice message within any consecutive 30-day period by obtaining the prior express consent from the called party, including by using an exempted call to obtain consent” without any reference to prior express *written* consent). Indeed, if prior express *written* consent were required, a caller would not be able to “us[e] an exempted call to obtain consent” as such consent would fail to satisfy the Commission’s prior express written consent standard. *See* 47 C.F.R. § 64.1200(f)(9) (defining “prior express written consent” as “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered ... advertisements or telemarketing messages,” and requiring that such written agreement include certain clear and conspicuous disclosures).

<sup>8</sup> *See* Associations Ex Parte at 2, Appendix B.