

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

In the Matter of)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	
)	
Petition for Declaratory Ruling of All About the)	CG Docket No. 02-278
Message, LLC)	
)	

COMMENTS OF THE REPUBLICAN NATIONAL COMMITTEE

I. INTRODUCTION

The Republican National Committee (“RNC”) respectfully submits these comments in support of the Petition for Declaratory Ruling filed by All About the Message, LLC (“AATM”) in the above-captioned proceeding.¹ The Petition asks the Federal Communications Commission (“Commission”) to declare that the delivery of a voice message directly to a voicemail box does not constitute a call that is subject to the Telephone Consumer Protection Act (“TCPA”) and its implementing rules. The RNC supports this clarification, which is consistent with the language of the TCPA. A contrary finding would not only restrict an important form of non-intrusive communication; it would have serious consequences for the First Amendment rights of those engaged in political communication via telephone.

II. DIRECT-TO-VOICEMAIL DOES NOT CONSTITUTE A “TELEPHONE CALL” THAT IS SUBJECT TO THE TCPA

The plain meaning of the TCPA compels a finding that delivery of a voice message directly to voicemail does not constitute a “call” that is subject to the TCPA. The TCPA

¹ All About the Message, LLC, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 31, 2017).

prohibits a person from using an automatic telephone dialing system or artificial or prerecorded voice to make a “call” to “any telephone number assigned to a...cellular telephone service...or any service for which the called party is charged for the call,” without the prior express consent of the called party.² Accordingly, the “call” prohibited by the TCPA is made using an autodialed or artificial or prerecorded messages to a telephone number assigned to a wireless service.

In contrast, direct-to-voicemail technology permits a voice message to go directly to the intended recipient’s mobile voicemail via a server-to-server communication, without a call being made to the recipient’s telephone number and without a charge. A call using direct-to-voicemail technology bypasses the wireless cellular network entirely and is instead routed over a business landline to the voicemail server of the voicemail service provider. Once the message is placed, the intended recipient receives an alert that he or she has a voicemail message. No call appears on the recipient’s phone bill and no charge is assessed for delivery or retrieval of the voicemail.

Based on these facts, direct-to-voicemail is not a “call” covered under the TCPA. Direct-to-voicemail messages are transmitted via a business line between servers, rather than to a wireless telephone number; they are delivered at no charge to the recipient; and they are delivered to a voicemail service, bypassing wireless carrier networks entirely. The Commission has clarified that voicemail is an “information service” that is not regulated under the Communications Act of 1934, as amended.³

Further, the fact that direct-to-voicemail ultimately results in a message to a wireless subscriber is not, by itself, enough to trigger application of the TCPA. In a similar context, the Commission has found that calls placed to wireline numbers that are forwarded to a wireless

² 47 C.F.R. § 64.1200(a)(1)(iii).

³ *See, e.g., Bell Operating Companies Joint Petition for Waiver of Computer II Rules, Order, 10 FCC Rcd 13758 (1995).*

number with the subscriber's consent do not violate the TCPA.⁴ The TCPA addresses only calls made to telephone numbers assigned directly to a cellular service. Thus, Commission precedent supports the construction advanced in the Petition.

III. REGULATORY RESTRICTIONS EXCEEDING THE SCOPE OF THE TCPA UNDULY BURDEN POLITICAL SPEECH IN CONTRAVENTION OF THE FIRST AMENDMENT

The Commission should limit its regulatory activities to the four corners of the TCPA, particularly with respect to political calls. Telephone outreach campaigns are a core part of political activism. Political organizations like the RNC use all manner of communications to discuss political and governmental issues and to solicit donations – including direct-to-voicemail messages. The Commission should tread carefully so as not to burden constitutionally protected political speech without a compelling interest.

Political speech is “at the very core of the First Amendment,” and subjecting direct-to-voicemail political messages to the TCPA would unnecessarily and improperly restrict that speech.⁵ It is a basic canon of constitutional law that the government may not restrict constitutionally protected speech unless “it chooses the least restrictive means to further [a compelling] interest.”⁶ While the government may have an interest in protecting individuals from unwanted and intrusive phone calls, direct-to-voicemail messages are designed to be non-intrusive so as not to interrupt the recipient. There is nothing to indicate that these messages

⁴ See, e.g., *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, 20 FCC Rcd 3788, ¶ 48 (2005).

⁵ *Carey v. Fed. Elec. Comm'n*, 791 F. Supp. 2d 121, 133-34 (D.D.C. 2001) (citing *Buckley v. Valeo*, 424 U.S. 1, 39 (1976)).

⁶ *Sable Commc'ns of Cal, Inc., v. FCC*, 492 U.S. 115, 126 (1989); see also *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010) (“[L]aws that burden political speech are ‘subject to strict scrutiny,’ which requires the Government to prove that the restriction ‘furthers a compelling interest and is narrowly tailored to achieve that interest.’”)

undermine the government's interest, or that government action is needed to further protect individuals.

Needlessly subjecting voicemails to the TCPA would sweep in, restrict, and chill non-intrusive political messages delivered to voicemail servers – including to individuals who expect and desire political communications. Expanding the scope of the TCPA in this manner would raise significant constitutional issues and must be rejected. Indeed, a broad restriction on direct-to-voicemail messages cannot be narrowly tailored to fit any compelling government interest. The RNC urges the Commission to adopt a workable approach that permits and encourages civic engagement and core political speech.

IV. CONCLUSION

The Commission should clarify that direct-to-voicemail messages do not trigger TCPA obligations and provide relief to callers making diligent, good-faith compliance efforts. Direct-to-voicemail is a true “win-win” for callers and their intended recipients, and the Commission should recognize it as such. Callers can use direct-to-voicemail messages to engage in normal, expected, and desired communications. Recipients, in turn, can choose whether and when to retrieve and listen to the message, allowing them to consider the message without the intrusion of an unsolicited phone call. A contrary finding would not only exceed the TCPA's scope but also burden political speech in contravention of the First Amendment.

Respectfully submitted,

**THE REPUBLICAN NATIONAL
COMMITTEE**

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