

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 of AmeriCredit Financial Services Inc.
d/b/a GM Financial for Waiver
CG Docket No. 02-278

ORDER

Adopted: December 6, 2019

Released: December 6, 2019

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant a limited waiver to AmeriCredit Financial Services Inc. d/b/a GM Financial (GM Financial) that will allow it to satisfy the Commission’s identification requirements for artificial or prerecorded voice calls by providing customers with its “doing business as” (d/b/a) name, GM Financial.1 We conclude that granting this limited waiver will better serve the public interest by ensuring that GM Financial’s customers understand the identity of the calling party and are not confused by the use of an unfamiliar legacy name.2

II. BACKGROUND

A. Artificial and Prerecorded Messages – Identification Requirements

2. Section 227(d)(3)(A) of the Communications Act requires that “all artificial or prerecorded telephone messages . . . shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call[.]”3

3. Consistent with that statutory mandate, section 64.1200(b)(1) of the Commission’s rules requires that all artificial or prerecorded voice telephone messages shall “[a]t the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated[.]”4 In adopting this requirement, the Commission clarified that “[w]ith respect

1 See Petition of AmeriCredit Financial Services Inc. d/b/a GM Financial for Waiver, CG Docket No. 02-278 (filed May 16, 2019) (Petition); see also 47 CFR § 64.1200(b)(1).

2 See, e.g., Petition at 6 (noting that “GM Financial is the name that customers are familiar with and is the name used on all customer-facing communications and interactions”).

3 See 47 U.S.C. § 227(d)(3)(A).

4 See 47 CFR § 64.1200(b)(1) (emphasis added).

to the caller's name, the prerecorded message must contain, at a minimum, the *legal name* under which the business, individual or entity calling is registered to operate.”⁵ The Commission recognized that some businesses use a d/b/a name in prerecorded messages.⁶ In that regard, the Commission clarified that the rule “does not prohibit the use of [d/b/a names], provided the legal name of the business is also stated.”⁷ The Commission noted that “adequate identification information is vital so that consumers can determine the purpose of the call, possibly make a do-not-call request, and monitor compliance with [Telephone Consumer Protection Act (TCPA)] rules.”⁸

4. In 2005, the Commission declined to reconsider the requirement for businesses to use registered legal names to identify themselves in artificial or prerecorded voice messages, concluding that the “use of [d/b/a names] alone in many instances may make it difficult to identify the company calling.”⁹ In 2015, however, the Consumer and Governmental Affairs Bureau (Bureau) granted a limited waiver of this requirement to National Grid, a utility company, finding that a waiver in that instance better served the public interest where the d/b/a name was used for all public-facing purposes and was registered with the appropriate regulatory authority in each place that the company operated.¹⁰

B. GM Financial Petition

5. On May 16, 2019, GM Financial filed a petition for waiver requesting that the Commission allow it to satisfy the caller identification requirements under the TCPA and section 64.1200(b)(1) of the Commission's rules by providing only its d/b/a name when placing artificial or prerecorded voice calls.¹¹ According to the Petition, GM Financial places artificial or prerecorded voice calls to its customers for a variety of reasons, including to convey information about the customer's outstanding account.¹² GM Financial states that its d/b/a name is authorized by the appropriate regulatory authority in every state, Guam, Puerto Rico, and the U.S. Virgin Islands.¹³

6. Specifically, GM Financial contends that there is good cause to grant a waiver because use of its d/b/a name alone will avoid customer confusion.¹⁴ In so doing, GM Financial points out that its d/b/a name is used on all customer-facing communications and interactions.¹⁵ In addition, GM Financial indicates that its customers are unfamiliar with the AmeriCredit Financial Services name because it is a

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14099-100, para. 144 (2003) (emphasis added).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788, 3805, para. 41 (2005) (*Second Reconsideration Order*) (reiterating that the “rule does not prohibit the use of ‘d/b/a’ information, provided that the legal name of the business is also provided”).

¹⁰ See *Petition for Expedited Declaratory Ruling and/or Waiver Filed by National Grid USA, Inc.*, CG Docket No 02-278, Order, 30 FCC Rcd 13276 (CGB 2015) (*National Grid Waiver Order*).

¹¹ See Petition at 9.

¹² *Id.* at 6.

¹³ *Id.* at 2.

¹⁴ *Id.* at 6; see also Letter from Eve K. Reed, Counsel for GM Financial to Marlene H. Dortch, FCC (dated Oct. 24, 2019) (citing incidents of customer confusion regarding use of legacy name).

¹⁵ Petition at 6-7 (noting that the d/b/a name is used on its website, credit applications, welcome letter, billing statements and mobile apps).

legacy name used only once in customer interactions in the fine print of a welcome letter.¹⁶

7. As a result, GM Financial argues that use of its legacy name to satisfy the identification requirements creates confusion on the part of the called party.¹⁷ Further, it claims that such confusion creates a risk of prolonged account delinquency because the consumer may not respond to discuss potential financial assistance options that may be available.¹⁸ Finally, GM Financial contends that use of only its d/b/a name will still afford called parties a reasonable opportunity to search for and find the company's contact information because its d/b/a name "GM Financial" is authorized for use in all states, Guam, Puerto Rico, and the U.S. Virgin Islands.¹⁹

8. On May 23, 2019, the Bureau released a Public Notice seeking comment on the issues raised in the Petition.²⁰ No comments were filed.

C. Waiver Standard

9. The Commission may waive its rules for good cause shown.²¹ A waiver may be granted if: (1) the waiver would better serve the public interest than would application of the rule; and (2) special circumstances warrant a deviation from the general rule.²² Generally, the Commission may grant a waiver of its own rules if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest.²³

III. DISCUSSION

10. We conclude that GM Financial's petition meets the standard for granting a limited waiver of section 64.1200(b)(1), and that such waiver does not undermine the policy objectives of that rule. Specifically, we find that GM Financial has demonstrated that good cause exists to waive the requirement to provide the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) and, instead, to allow it to use the d/b/a name "GM Financial" when making artificial or prerecorded voice message calls. As discussed below, we believe the relief we grant here does not undermine the policy objectives of the rule because consumers will continue to have the ability to search for the identity and contact information of the calling party via the appropriate state or local databases for registered d/b/a names.

11. First, we conclude that GM Financial's request for waiver to use only its authorized d/b/a name rather than the legal or official name in artificial or prerecorded voice messages serves the public interest in this instance because it has demonstrated that its customers are unfamiliar with the legacy name that constitutes its legal or official business names in the states and territories.²⁴ For example, GM

¹⁶ *Id.* at 8 ("this reference to the legacy name is likely the first and last time that a customer ever will encounter that name").

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 9.

²⁰ See *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Waiver filed by Americredit Financial Services Inc. d/b/a GM Financial*, CG Docket No. 02-278, DA 19-457 (rel. May 23, 2019).

²¹ 47 CFR § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

²² *Northeast Cellular*, 897 F.2d at 1166.

²³ *Id.* at 1157.

²⁴ See Petition at 9.

Financial notes that it uses its d/b/a name for all public-facing purposes.²⁵ Specifically, GM Financial has demonstrated that the use of a more familiar d/b/a name will reduce the risk of potential confusion regarding the identity of the calling party because it uses only the registered d/b/a name on bills, websites, and credit applications.²⁶ As a result, we agree that the use of a legacy name in its voice messages may confuse customers as to the identity of the calling party. Any such confusion regarding the identity of the caller is particularly detrimental to those consumers who rely on artificial or prerecorded notifications of delinquent payments.²⁷ There is no record evidence to dispute GM Financials' assertions.

12. Second, to the extent the rule would otherwise require using an unfamiliar legacy name, we find that special circumstances warrant a deviation from the general rule. Specifically, GM Financial has demonstrated that: 1) its customers are familiar with its registered d/b/a name because all customer services are provided in that name;²⁸ 2) its customers are unfamiliar with the official or legal names, which can cause confusion regarding the identity of the calling party when using artificial or prerecorded messages;²⁹ 3) it is authorized to use the d/b/a name in each state and territory in which it conducts business;³⁰ and 4) customers can search for and find the relevant contact information via the state or local databases for d/b/a names.³¹ No party disputes these points in the record.

13. Although the Commission has previously rejected requests to allow use of a d/b/a name in lieu of an official or legal name to satisfy the requirements of section 64.1200(b)(1) because of concerns regarding the adequacy of such names in identifying the calling party, we believe, consistent with our *National Grid Waiver Order*, that the totality of special circumstances in this case alleviates these concerns.³² In particular, we note that the basic policy objective of the rule is maintained by limiting the waiver to the use of its registered d/b/a name. As noted above, GM Financial has demonstrated that its d/b/a name is commonly known to its customers. In addition, because GM Financial has registered the d/b/a name covered by this waiver, the recipients of artificial or prerecorded voice calls are not hindered from obtaining the relevant corporate contact information from the state or local government regulatory body responsible for registering d/b/a names in a way that is similar to that of registered "legal" or "official" names. As a result, consumers will have adequate information to determine the identity of the calling party, make a do-not-call request, and monitor compliance with TCPA rules.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 227, and section 1.3 of the Commission's rules, 47 CFR § 1.3, and the authority delegated in sections 0.141 and 0.361 of the rules, 47 CFR §§ 0.141, 0.361, that the petition for waiver of section 64.1200(b)(1) of the Commission's rules, 47 CFR § 64.1200(b)(1), filed by AmeriCredit Financial Services Inc., in CG Docket No. 02-278 IS GRANTED to the extent set forth herein.

²⁵ *Id.* at 6.

²⁶ *Id.* at 7.

²⁷ *Id.* at 8.

²⁸ *Id.* at 6-7.

²⁹ *Id.* at 8.

³⁰ *Id.* at 9.

³¹ *Id.* at 4.

³² See *National Grid Waiver Order*, 30 FCC Rcd at 13279-80, paras. 10-13.

15. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre
Chief
Consumer and Governmental Affairs Bureau