

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
American Bankers Association Petition)
For Exemption to the TCPA) CG Docket No. CG 02-278
)
Rules and Regulations Implementing the)
Telephone Consumer Protection Act of 1991)

COMMENTS OF NOBLE SYSTEMS CORPORATION

I. INTRODUCTION AND SUMMARY

Noble Systems Corporation (“NSC”) submits these comments in response to the November 6, 2014 Public Notice from the Federal Communications Commission (“Commission”) seeking comments on the petition filed by the American Bankers Association (“ABA”).¹ The Petition requests the Commission exempt certain types of financial-related communications from the Telephone Consumer Protection Act (“TCPA”).² NSC supports the goal of the Petition and requests that the Commission grant the relief as requested, provided however, that recipients are able to opt-out from receiving future notifications.

II. DISCUSSION

The ABA requests the Commission exercise its authority to exempt certain financial-related communications from the TCPA’s restrictions on using an autodialer to call wireless numbers. These communications pertain to, *inter alia*, financial communications such as notification of potential fraudulent activities, security breaches, and confirmation of wire

¹ See, *Petition for Exemption of the American Bankers Association*, CG Docket No. 02-278 (filed October 14, 2014) (“Petition”).

² *Id.* at 3.

transfers.

Financial fraud is recognized as a growing problem, and it is safe to assume that banking customers generally desire to receive timely information intended to benefit their financial well-being and prevent fraud. Using automated calls or text messages to inform customers is practical and allows timely notification to minimize further problems, and the proliferation of individuals only having a mobile phone means that this information must be sent to a wireless number. Evidence shows that this presents a real risk of litigation to the sender under the TCPA.

The Petition details various potential benefits that banking customers would receive by having prompt notification of certain information, such as potentially fraudulent charges on their credit cards. Noble Systems believes that just as with the exemption recently granted by the Commission for package delivery notifications, there is a significant public benefit to be gained by granting the exemption requested in the Petition.

Noble Systems also recognizes that in some instances, more than one text message may be required to convey sufficient information to an individual. A single text message of 160 characters may be simply insufficient to convey the required information. Thus, a degree of flexibility is appropriate in allowing the institution to determine whether one or more messages are required. Further, it may be reasonable in various circumstances to allow a follow-up message if no response is received to an initial message.³

An Opt-Out Mechanism Should be Required

However, this additional flexibility further emphasizes the need to require an “opt-out” mechanism. The Petition requests that the “opt-out” requirement for such notifications should only apply to money transfer notifications and not for the other types of notifications or alerts.⁴ The reason given is that if the recipient chooses to opt-out, then “the same messages will be sent

³ Petition, at p. 19.

⁴ Petition, at p. 21.

through channels that are less efficient and less likely to permit timely remedial action.”⁵

From a policy perspective, any time a notice is sent to an individual to their wireless number without their consent, some form of opt-out mechanism should be provided. Allowing more than one message, as well as follow-up messages, further emphasizes the need for an opt-out mechanism. Otherwise, the recipient may be forced to receive and/or react to what they consider as “spam.” Merely because this may be a more efficient channel for the sender to use is not a sufficient reason to force the recipient to continue receiving such messages. At this point, the overall benefit does not justify the privacy intrusion.

The Petition states alternative channels are less likely to permit timely remedial action. This raises the question of whether using the desired channel as requested in the Petition to send notifications will be limited to certain calling windows. Specifically, although technology allows sending a timely text message or voice call after detecting potentially fraudulent activity, what calling windows will limit when this notification will be sent to the customer? Will recipients receive such texts or voice calls at e.g., 3:00 a.m., when the fraud may have been detected? If so, then this further indicates the importance of requiring an opt-out mechanism. Or, will the notifications adhere to conventional calling windows, typically 8:00 a.m. to 9:00 p.m. of the local time of the recipient? If so, then sending an email notification may be just as timely, or more timely, than a text or voice call, since there is no time prohibition regarding sending an email at e.g., 3:00 a.m.⁶

Finally, the Petition cites a survey that found that nearly “60 percent of consumers preferred to be contacted on their mobile telephones concerning fraudulent activity, and that more than one in three consumers preferred to receive those notification by means of text messaging.”⁷ Stated another way, about 40% of consumers do not prefer to be contacted on their mobile telephones concerning fraudulent activity and about two in three consumers do not

⁵ Petition, at p. 21.

⁶ See, e.g. footnote 32, p. 19 indicating that an email may be sent if no response is received.

⁷ Petition, at pp. 6-7.

prefer to receive those notifications by means of text messaging. Consequently, it would seem inappropriate for the Commission to grant an exemption allowing notifications to be sent to recipients on their mobile phones without any recourse to opt-out from future notifications. All these reasons point to the need for an opt-out mechanism.

II. CONCLUSION

NSC urges the Commission to grant an exception to the TCPA as requested by the ABA for sending various financial-related notifications, with the exception that in all cases, an opt-out mechanism must be provided.⁸

Respectfully submitted,

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⁸ Any exemption granted by the Commission should not be limited to only wireless numbers, as the TCPA prohibition of using an autodialer applies to any telephone number assigned to “any service for which the called party is charged for the call”, which may include measured-service landline numbers.