

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

In the Matter of	)	
	)	
Petition of Wells Fargo & Company for	)	CG Docket No. 02-278
Waiver of Section 64.1200(a)(4)(iv) of the	)	
Commission’s Rules	)	CG Docket No. 05-338
	)	

**REPLY COMMENTS OF WELLS FARGO & COMPANY IN SUPPORT OF ITS  
PETITION FOR RETROACTIVE WAIVER OF SECTION 64.1200(a)(4)(iv) OF THE  
COMMISSION’S RULES**

Wells Fargo & Company (“Wells Fargo”), through counsel, respectfully submits these Reply Comments in support of its Petition for Waiver (“Petition”) asking that the Commission grant Wells Fargo a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission’s Telephone Consumer Protection Act (TCPA) rules with respect to any advertising facsimiles that were sent or may be alleged to have been sent by Wells Fargo with the recipient’s prior express invitation or permission, but that did not include the opt out notice specified in that rule.<sup>1</sup>

As the Commission found in the *Order* issued October 30, 2014 in the above-referenced dockets, there is good cause for such a waiver because of the “specific combination” of two factors: *first*, the inconsistent footnote in the *Junk Fax Order* that stated that the “opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements;” and, *second*, a “lack of explicit notice” provided prior to the *Junk Fax Order* that the Commission

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<sup>1</sup> See *Petition of Wells Fargo & Company for Waiver of Section 64.1200(a)(iv)(4) of the Commission’s Rules*, CG Docket Nos. 02-278, 05-338 (Apr. 29, 2015) (“Petition”); see also 47 C.F.R. § 64.1200(a)(4)(iv); 47 C.F.R. § 1.3; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket Nos. 02-278, 05-338, Order, FCC 14-164 (Oct. 30, 2014) (“Order”).

was considering an opt out requirement on fax advertisements sent with the prior express invitation or permission of the recipient.”<sup>2</sup> The Commission further found that such a waiver served the public interest because the “reasonable confusion” surrounding the opt out notice requirement left some businesses open to “potentially substantial damages” under the TCPA.”<sup>3</sup>

The Commission’s rationale for granting waivers to other entities pursuant to the *Order* applies with equal force to Wells Fargo. Any potential noncompliance by Wells Fargo with the opt out notice requirement was due to the “reasonable confusion” surrounding the opt-out notice requirement and the “lack of explicit notice” that the Commission was considering that requirement.<sup>4</sup> And, as a nationwide financial institution, Wells Fargo is frequently the target of TCPA litigation and faces on ongoing risk of “potentially substantial damages” under the TCPA.<sup>5</sup> In sum, as established by the factors set forth in the *Order*, granting a waiver to Wells Fargo is supported by good cause and is in the public interest.

Moreover, no commenter filed an opposition to the Petition. Accordingly, Wells Fargo respectfully requests that the Commission grant Wells Fargo a retroactive waiver of Section 64.1200(a)(4)(iv) for any fax that was sent prior to April 30, 2015 with the invitation or permission of the recipient but that did not include the opt out notice specified by that rule.

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<sup>2</sup> *Order* ¶¶ 24-26 (the Commission found that the “specific combination” of these factors “presumptively establishes good cause for retroactive waiver” of the opt out requirement); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3810, n.154 (2006).

<sup>3</sup> *Order* ¶ 27.

<sup>4</sup> Petition at 4.

<sup>5</sup> *Id.* at 4-5, n. 17.

Respectfully submitted,

WELLS FARGO & COMPANY

By:



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