

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

In the Matter of)
)
Rules and Regulations Implementing) CG Docket No. 02-278
the Telephone Consumer Protection)
Act of 1991)

**NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
COMMENTS IN SUPPORT OF THE NATIONAL ASSOCIATION OF
BROADCASTERS' PETITION FOR RETROACTIVE WAIVER**

The National Cable & Telecommunications Association (NCTA)¹ hereby submits comments in support of the Petition filed by the National Association of Broadcasters (*NAB Petition*) for a retroactive waiver relating to the Commission's rules and 2012 interpretation of the prior express written consent requirement that the Commission adopted pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).²

The 2012 rule change revised the Commission's TCPA regulations to require prior express written consent for telemarketing calls utilizing an automatic telephone dialing system (autodialer) or an artificial or prerecorded voice.³ More recently, however, the Commission recognized that the language of its 2012 decision promulgating the rule change both "caused confusion" and had the potential to subject entities to "pointless and expensive class action

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 80 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$230 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.

² See FCC, Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions for Retroactive Waiver Filed by the National Association of Broadcasters, F-19 Holdings, LLC, and Kale Realty, LLC*, CG Dkt. No. 02-278, DA 15-1074 (Sept. 25, 2015) (*Public Notice*).

³ See *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report & Order, 27 FCC Rcd 1830 ¶¶ 20-26 (2012) (*2012 TCPA Order*), adopting and/or amending, *inter alia*, 47 C.F.R. § 64.1200(a)(2), (3) & (f)(8).

litigation.”⁴ Accordingly, the Commission granted a retroactive and prospective waiver from the prior express written consent requirement to the Coalition of Mobile Engagement Providers, the Direct Marketing Association, and the Retail Industry Leaders Association, who had petitioned the Commission for relief from adverse effects arising from the confusion the prior ruling engendered (collectively, the “Original Petitioners”).⁵ The retroactive waiver provided relief from October 16, 2013, which was the effective date of the 2012 requirement, to the *2015 TCPA Order* release date, which was July 10, 2015.⁶ A corollary prospective waiver began on the *2015 TCPA Order* release date of July 10, 2015, and expired on October 7, 2015.⁷

Although the Commission’s prior waivers were limited to the Original Petitioners, the confusion caused by the *2012 TCPA Order* and the accompanying threat of litigation was not in any way limited. Since release of the *2015 TCPA Order*, several other entities have filed petitions requesting the same relief, including NCTA.⁸ In each case, petitioners cite to the same reasons that served as the basis for the grant of the waiver to the Original Petitioners: confusion regarding the written consent requirements, and exposure to the same kind of “pointless and expensive class action litigation” as the Original Petitioners. The *Public Notice* to which these comments respond seeks input on three of these petitions.⁹

⁴ *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling & Order, 30 FCC Rcd 7961 ¶ 102 (2015) (*2015 TCPA Order*).

⁵ *See id.*

⁶ *See id.*

⁷ *See id.*

⁸ *See* Petition of Kale Realty, LLC for Retroactive Waiver of 47 C.F.R. 64.1200(a)(2), CG Docket No. 02-278 (filed July 23, 2015); Petition of F-19 Holdings, LLC, and All Affiliated Franchisees for Retroactive Waiver of 47 U.S.C. § 227 and Federal Communications [sic] Order 12-21 in accordance with Order 15-72, CG Docket No. 02-278 (filed July 29, 2015); Nat’l Ass’n of Broadcasters Petition for Retroactive Waiver, CG Docket No. 02-278 (filed Aug. 18, 2015) (*NAB Petition*); NCTA Petition for Waiver, CG Docket No. 02-278 (filed Oct. 1, 2015).

⁹ *See supra* nn.2 & 8.

Significantly, the *NAB Petition* notes that, “[a]s a simple remedy, the Commission should declare that all parties to the proceeding [giving rise to the *2015 TCPA Order*], Petitioners and commenters alike, are entitled to the retrospective and prospective waivers articulated” in the *2015 TCPA Order*.¹⁰ NCTA supports grant of each of the petitions described in the *Public Notice*, and of this aspect of the NAB Petition in particular. In fact, in its own petition, NCTA has gone a step further and advocated that, in the interest of equity, the Commission should grant a blanket waiver for all entities subject to TCPA obligations.¹¹

NCTA’s petition also notes that while the prospective 89-day waiver granted to the Original Petitioners expired on October 7, 2015, the need for a waiver has not expired.¹² Due to the confusion caused by the language in the *2012 TCPA Order*, expensive class action litigation continues to be filed that implicates consent obtained during the time period at issue in the *2015 TCPA Order*’s retroactive waiver. A blanket grant of the waiver relief that the Commission extended to the Original Petitioners in the *2015 TCPA Order* would provide all entities sufficient time to comply with the prior written consent requirement and enable them to better defend claims and avoid unnecessary and costly litigation moving forward.

¹⁰ *NAB Petition* at 3.

¹¹ *See NCTA Petition* at 1.

¹² *See id.* at 4.

For the foregoing reasons, the Commission should grant the *NAB Petition* and declare that all entities subject to TCPA obligations are entitled to a waiver from the prior written consent requirement, running from October 16, 2013 through October 7, 2015, consistent with the *2015 TCPA Order*.

Respectfully submitted,

/s/

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