

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

Notice of Proposed Rulemaking

In the Matter of:

**Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991**

CG Docket No. 02-278

REPLY COMMENTS OF THE CARGO AIRLINE ASSOCIATION

Introduction

By publication in the March 22, 2010, edition of the Federal Register, 75 Fed. Reg. 13471 (Mar. 22, 2010), the Federal Communications Commission (“FCC”) has proposed rules that are intended to harmonize the FCC Regulations issued pursuant to the Telephone Consumer Protection Act (“TCPA”) with those issued by the Federal Trade Commission in 2008.¹ This proceeding, while clearly intended to address potential issues in the telemarketing industry, also raises issues that relate to prerecorded calls made by service providers who are not soliciting business from the persons called. One such service is the customer notification of scheduled deliveries by air cargo companies. Such calls are made as a service to those to whom packages are sent and do not in any way advertise a product or otherwise solicit business.

The Cargo Airline Association (the “Association”) is the nationwide trade organization representing United States all-cargo carriers.² Members of the Association may at times desire to notify package recipients of delivery schedules or other information relating to retail orders. Therefore, the Association has a substantial interest in this proceeding and submits the following Reply Comments.

The Notice of Proposed Rulemaking

If one thing is clear about the proposed FCC rules, it is that they are clearly intended to address practices in the **telemarketing** industry. Accordingly, the Notice of Proposed Rulemaking (“NPRM”) at the outset notes that, “In this document, the Commission invites comment on proposed revisions to its rules under the Telephone

¹ *Telemarketing Sales Rule, Final Rule*, Federal Trade Commission, 73 Fed. Reg. 51164-01 (Aug. 29, 2008).

² Association members include ABX Air, Atlas Air, Capital Cargo, DHL, FedEx Express, Kalitta Air and UPS Airlines.

Consumer Protection Act (TCPA) that would harmonize those rules with the Federal Trade Commission's (FTC's) recently amended **Telemarketing Sales Rules**". 75 Fed. Reg. at 13471 (emphasis added). "As amended, the **Telemarketing Sales Rule** differs in certain respects from the Commission's TCPA rules regarding prerecorded **telemarketing** calls (also known as "robocalls") and other **telemarketing** practices". FCC 10-18, CG Docket No. 02-278, 2 (January 22, 2010). Moreover, in the separate statements of each FCC Commissioner, each of them references the need to take further action to regulate the conduct of telemarketers – not the pre-recorded messages provided as a notification service to customers.

The Commission has already recognized the significant difference between telemarketing calls and the service calls made by Association members by exempting the service calls that are commercial, but do not contain an advertisement, from the ban on pre-recorded messages made to residential phones. *See* FCC 10-18, CG Docket No. 02-278, 11, fn. 63. This distinction should be maintained herein by applying any action taken in this docket solely to **telemarketing** calls and **not** the types of calls already exempt with respect to calls to residential phones. Such a result would be consistent with the stated purpose of the proposed rule, and with the goals of the FTC Telemarketing Sales Rule.

Additional Actions

In addition to limiting the applicability of the proposed rules to pre-recorded **telemarketing** calls, the Commission should also take the opportunity to further address the distinction between telemarketing solicitation calls and the notification calls supplied as a customer service by Association members.³ As a practical matter, in today's world there is an ever-shrinking difference between residential phone lines and cell phones. Indeed, a growing percentage of the population is abandoning residential service and using cellular phones as its primary service provider. In turn, contracts for cellular service have migrated to mirror contracts for residential service, with most service plans provided for a monthly payment, rather than a charge for each call.

In view of these circumstances, the Commission should simply declare that, since there are virtually no charges on a per cell call basis, the same standards should apply to both residential and cell service. Since pre-recorded commercial calls that do not solicit business, but rather provide useful information to consumers, are already exempt from the pre-recorded message ban on residential calls, they should also be exempt from calls made to cellular phones. By taking this action, the Commission would concentrate its regulatory efforts on the issue that the statute, regulations and Commissioner's comments are intended to address – potential abuses in the telemarketing industry.

Conclusion

³ The Association recognizes that the FCC has recently requested comments in this Docket on a Petition for Expedited Clarification and Declaratory Ruling filed by Global Tel*Link Corporation on March 4, 2010. This Petition raises similar issues that should be considered by the Commission. The Association intends to file comments on the Global Tel*Link Petition in addition to the comments filed herein.

The Cargo Airline Association respectfully requests that the Commission again recognize the difference between the telemarketing calls that are the real subject of the instant rulemaking and the informational, non-solicitation, calls made by various members of the business community. In order to accomplish this objective, the Commission should:

1. Specifically limit the scope of this rulemaking (the potential requirement to obtain permission for the call to be in writing) to telemarketing calls, and
2. Recognize the present day realities of today's telephone marketplace by extending the exemption from the ban on pre-recorded calls for non-solicitation commercial calls to encompass cell phone, as well as residential phone calls.

Respectfully submitted,



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