

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF SOUNDBITE COMMUNICATIONS

SoundBite Communications, Inc. (“SoundBite”) submits the following reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

SoundBite is a leading provider of automated voice messaging services, offering integrated voice, text, and email messaging solutions that organizations in industries such as collections, financial services, retail, telecom and media, and utilities rely on to send messages for collections, customer care, and sales and marketing applications.

Numerous commenters share SoundBite’s concern that, inadvertently or otherwise, the NPRM goes far beyond harmonization of the Commission’s telemarketing rules with those of the FTC and would impose unnecessary restrictions on autodialed and prerecorded *non-commercial* messages to wireless telephones. Applying the FTC’s telemarketing consent requirements to these messages would reverse the FCC’s longstanding and common sense policy recognizing that a person who gives a company or organization his or her wireless telephone number as a contact number is expressly consenting to be called at that number. This policy should be retained for autodialed and prerecorded informational calls.

^{1/} *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 25 FCC Rcd 1501 (2010) (“2010 Telemarketing NPRM” or “NPRM”).

ARGUMENT

The FCC describes its *2010 Telemarketing NPRM* as “an effort to remove certain differences in the treatment of entities that operate outside of the FTC’s jurisdiction, and to further empower residential telephone subscribers to avoid receiving telephone solicitations to which they object” by “conform[ing] [FCC] TCPA rules to the FTC’s Telemarketing Sales Rule.”^{2/} A many commenters point out, however, the FCC’s proposed rules do not, in fact conform to the FTC rules, but will require written opt-in for autodialed and prerecorded *informational* calls to wireless phones as well as prerecorded telemarketing calls – going significantly beyond the FTC rules, which place no similar restrictions on informational calls.^{3/} Indeed, the FTC, in adopting the rules to which the *2010 Telemarketing NPRM* purports to conform, stated expressly that its telemarketing consent requirement does not apply to informational calls.^{4/}

The Commission’s current policy construing the furnishing of a wireless number as consent to receive informational messages at that number continues to be grounded in sound policy and common sense. As noted by many commenters, a wireless phone number may be the only means a business, employer, or school has to contact a customer, employee, or parent. Increasingly, consumers report that they have only a wireless phone, or that even where they

^{2/} *2010 Telemarketing NPRM* ¶ 2.

^{3/} American Council of Life Insurers Comments at 1; American Teleservices Association Comments at 1-2; Arbitron Comments at 5; Career College Association Comments at 2; Citigroup Comments at 1-2; DIRECTV Comments at 5; JPMorgan Chase & Co. Comments at 11-13; Mortgage Bankers Association Comments at 4-5; National Association of Chain Drug Store Comments at 2; SoundBite Communications Comments at 2-6; Student Loan Servicing Alliance Comments at 6-9; Visa Comments at 2; Wells Fargo Comments at 3-4

^{4/} SoundBite Communications Comments at 2-4.

have a landline phone they consider their wireless phone to be their main number.^{5/} Not surprisingly, therefore, an increasing number of individuals and households give a wireless number to businesses as their contact number and expect to be contacted by those businesses at that number.^{6/} For example, Wells Fargo Bank estimates that 25% to 30% of its customers provide the bank with only a cell phone number as a means of contact,^{7/} and the United States Department of Education estimates that 50% of all delinquent educational loan holders have only cell phones.^{8/}

As numerous commenters explain, requiring a separate written opt-in for customers and households to receive prerecorded and autodialed informational calls at a wireless contact number would significantly increase costs of providing important non-marketing information to those persons and households.^{9/} The American Teleservices Association estimates its member companies would incur \$70 to \$80 million in additional costs if forced to use live operators to place such calls.^{10/} The extra workload and expense of the FCC's proposed requirement will also make it difficult or impossible for government entities to continue making informational calls with important information. The United States Department of Education estimates that the FCC's proposed requirement could result in an increase of 28% to 30% in costs of student loan

^{5/} See, e.g., Arbitron Comments at 10; Federal Reserve Board Staff Reply Comments at 4; Market Research Association Comments at 6; SoundBite Communications Comments at 6-7; Wells Fargo Comments at 11.

^{6/} American Teleservices Association Comments at 8; Bank of America Comments at 5; DIRECTV Comments at 3; PayPal Comments at 2; Newspaper Association of America Comments at 14; SoundBite Communications Comments at 6-7; Visa Comments at 3

^{7/} Wells Fargo Comments at 8.

^{8/} United States Department of Education Comments at 4.

^{9/} See, e.g., American Council of Life Insurers Comments at 3-4; Marketing Research Association Comments at 3; United States Telecom Association Comments at 3; Wells Fargo Comments at 9-10.

^{10/} American Teleservices Association Comments at 4.

collection.^{11/} The National School Boards Association says it would be extremely difficult for schools to comply with regard to informational calls they need to make to parents.^{12/} Federal Reserve Board Staff and others likewise express concern that the proposed rule could inhibit an institution's ability to reach consumers in cases of suspected fraud or identity theft.^{13/}

The important communications households expect to receive from businesses and other entities "include such critical communications as fraud alerts, notifications of data security breaches and other events, debt reminders, notices of mortgage modification services, product recall information, school cancellation notices and dozens of other types of communications."^{14/} The FCC's proposal would significantly restrict the ability of business and other entities to contact customers, employees, or members to provide these types of important communications at the very numbers the households say they prefer to be contacted.

There is no evidence in the record of this proceeding of any widespread abuse of the Commission's current prior express consent requirement applicable to autodialed and prerecorded informational messages to a wireless phone or any evidence to support a change in that policy.^{15/} Indeed, as SoundBite pointed out in its initial comments, the FTC's determination after its own lengthy examination of the issue was the contrary conclusion that "[t]here is support in the record for prerecorded informational messages."^{16/}

^{11/} United States Department of Education Comments at 4.

^{12/} National School Boards Association Comments at 1.

^{13/} Federal Reserve Board Staff Reply Comments at 4. See also American Financial Services Association Comments at 5; Bank of America Comments at 6-7; Citigroup Comments at 3-4; Financial Services Roundtable, et al., Comments at 10-16; PayPal Comments at 2; Visa Comments at 2

^{14/} Industry Trade Associations Ex Parte Letter at 2.

^{15/} American Teleservices Association Comments at 7; Arbitron Comments at 5-8; SoundBite Communications Comments at 7-9.

^{16/} SoundBite Communications Comments at 3.

Neither can a rule change be justified on the basis of changing costs to consumers. There is even less evidence for a cost basis now for enacting restrictions on informational calls to wireless phones than there was when the FCC's current policy was enacted -- average costs per minute for cell phone usage have declined from 45 cents per minute in 1991 to 5 cents per minute today.^{17/} As one commenter put it, the FCC "is addressing a non-existent problem" with its proposed rule for informational calls to wireless phones.^{18/}

CONCLUSION

There is widespread agreement among commenters that the FCC's current policy on prerecorded and autodialed informational calls best serves consumers and that application of any new rule requiring written opt-in should be limited to telemarketing calls.^{19/} The Commission

^{17/} Arbitron Comments at 13-14; Wells Fargo Comments at 11-12.

^{18/} Arbitron Comments at 5.

^{19/} See Alarm Industry Communications Committee Comments at 2-5; American Council of Life Insurers Comments at 3; American Financial Services Association Comments at 2; American teleservices Association Comments at 1-2; Arbitron Comments at 1-2; Bank of America Comments at 2-5; Career College Association Comments at 2; Citigroup Comments at 2-3; DIRECTV Comments at 2; Federal Reserve Bank Staff Reply Comments at 3; Financial Services Roundtable, et al., Comments at 3-4; JPMorgan Chase & Co. Comments at 9; Mortgage Bankers Association Comments at 1; National Association of Chain Drugstores Comments at 2; National School Boards Association Comments at 1; PayPal Comments at 1; Marketing Research Association Comments at 5; National Association of Mutual Insurance Companies Comments at 4; National Council of Higher Education Loan Programs Comments at 5; National Retail Federation Comments at 3; Newspaper Association of America Comments at 12-15; Sprint Nextel Comments at 4; Student Loan Servicing Alliance Comments at 6-9; United States Department of Education Comments at 4; United States Telecom Association Comments at 1; Visa Comments at 3; Walgreens Comments at 1; Wells Fargo Comments at 1-2. See also Industry Trade Associations Ex Parte Letter at 1-2 (signed by (in addition to some commenters listed above) ACA International, American Bankers Association, Air Transport Association, Alliance of nonprofit Mailers, Coalition of Higher Education Assistance Organizations, Consumer Bankers Association, DBA international, Direct Marketing Association, Edison Electric Institute, Education Finance Council, Magazine Publishers of America, National Association of College and University Business Officers, National Association of Retail Collection Attorneys, National Association of Student Financial Aid Administrators, National Business Coalition on E-commerce and Privacy, U.S. Chamber of Commerce).

should revise the rule changes proposed in the NPRM to continue to allow autodialed and prerecorded informational calls to wireless telephones where the called party has given the wireless number as a contact number.

Respectfully submitted,

/s/ Howard J. Symons

John Tallarico
Vice President, Product Management
SoundBite Communications, Inc.
22 Crosby Drive
Bedford, MA 01730
(781) 897-2500

Howard J. Symons
Ernest C. Cooper
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 434-7300

June 21, 2010