

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Consumer & Governmental Affairs Bureau)	CG Docket No. 02-278
Seeks Comment on Petition for)	
Expedited Declaratory Ruling from)	
GroupMe, Inc.)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	

COMMENTS OF THE CARGO AIRLINE ASSOCIATION

The Cargo Airline Association (“CAA”)¹ respectfully submits these comments in response to the July 24, 2012 Public Notice (“Public Notice”) released by the Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceeding.² The Public Notice seeks comment on a Petition for Expedited Declaratory Ruling and Clarification (“Petition”) filed by GroupMe, Inc. (“GroupMe”).³ As part of its Petition, GroupMe asks the Federal Communications Commission (“Commission”) to clarify that consent for certain non-telemarketing, informational calls or text messages to wireless telephone numbers under the Telephone Consumer Protection Act (“TCPA”)⁴ may be given through intermediaries. CAA supports GroupMe’s request and encourages the Commission to seek comment on CAA’s

¹ CAA is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry. CAA members include ABX Air, Atlas Air, Capital Cargo, DHL, FedEx Express, Kalitta Air and UPS Airlines.

² *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from GroupMe, Inc.*, CG Docket No. 02-278, Public Notice, DA 12-1180 (rel. July 24, 2012).

³ See GroupMe, Inc., Petition for Expedited Declaratory Ruling and Clarification, CG Docket No. 02-278 (filed Mar. 1, 2012) (“GroupMe Petition”).

⁴ 47 U.S.C. § 227.

separate Petition for Expedited Declaratory Ruling regarding package delivery notifications, which is attached.

The TCPA requires parties to obtain “prior express consent” from the called party to place non-emergency calls using automatic telephone dialing systems (“autodialers”) or artificial or prerecorded voice messages to, *inter alia*, wireless telephone numbers.⁵ CAA agrees with GroupMe that obtaining consent directly from the recipient of a call or text message to a wireless telephone number “is not possible in all instances,” and the Commission has previously recognized that a party that obtains consent or other authority to make an automated call can transfer that consent to an associated party. For example, in 2008, the Commission found that third-party debt collectors could place autodialed and prerecorded message calls to wireless telephone numbers that had been provided in connection with an existing debt, stating that such calls “are made with the ‘prior express consent’ of the called party.”⁶ In addition, the Commission in 2005 clarified that State Farm agents could rely on State Farm’s existing business relationship with policyholders to place otherwise restricted telemarketing calls to those policyholders on behalf of State Farm.⁷ The Commission should likewise confirm here that, in limited circumstances, parties can transfer consent to place autodialed and prerecorded non-telemarketing, informational calls and messages to wireless telephone numbers.

⁵ 47 U.S.C. § 227(b)(1)(A); *see also* 47 C.F.R. § 64.1200(a)(1). The Commission has held that short message service (“SMS”) messages are “calls” under the TCPA. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 165 (2003).

⁶ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559 ¶ 9 (2008).

⁷ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, Declaratory Ruling, 20 FCC Rcd 13664 (2005).

CAA recently filed the attached Petition for Expedited Declaratory Ruling, in which CAA asks the Commission to recognize the public interest in receiving time-sensitive package delivery notifications and issue a declaratory ruling that will enable CAA members to contact package delivery recipients on their wireless telephone numbers. CAA requests that the Commission confirm that delivery companies can rely on representations from package senders that a package recipient consents to receiving autodialed and prerecorded customer service notifications regarding the shipment through wireless telephone numbers. Specifically, the provision of a package recipient's wireless telephone number by a package sender should establish prior express consent for shipping companies to send notifications related to that package. As GroupMe states, package delivery notifications and other informational communications services are "not what Congress had in mind when it adopted the TCPA" and do not "raise any of the consumer protection issues the Commission sought to resolve in its implementing regulations."⁸ The Commission should therefore seek comment on and grant CAA's Petition as soon as possible.

Respectfully submitted,



Stephen A. Alterman
President
Cargo Airline Association
1620 L Street, NW
Suite 610
Washington, D.C. 20036
202-293-1030
salterman@cargoair.org

August 30, 2012

⁸ See GroupMe Petition at 19.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Cargo Airline Association)	CG Docket No. _____
Petition for Expedited Declaratory Ruling)	
Regarding Non-Telemarketing)	
Package Notifications)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

PETITION FOR EXPEDITED DECLARATORY RULING

The Cargo Airline Association (“CAA”),¹ pursuant to Section 1.2 of the Federal Communications Commission’s (“Commission”) rules,² hereby respectfully submits this Petition for Expedited Declaratory Ruling regarding the Telephone Consumer Protection Act (“TCPA”)³ and the Commission’s TCPA rules.⁴ CAA requests that the Commission clarify that, in certain limited circumstances, prior express consent to receive autodialed and prerecorded non-telemarketing calls and messages (including text messages) under the TCPA can be provided through an intermediary or associated third party. Specifically, the Commission should confirm that delivery companies can rely on representations from package senders that a package recipient consents to receiving autodialed and prerecorded customer service notifications regarding the shipment through wireless telephone numbers. Alternatively, the Commission

¹ CAA is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry. CAA members include ABX Air, Atlas Air, Capital Cargo, DHL, FedEx Express, Kalitta Air and UPS Airlines.

² 47 C.F.R. § 1.2.

³ 47 U.S.C. § 227.

⁴ 47 C.F.R. § 64.1200 *et seq.*

should declare that package delivery notifications are exempt from the TCPA's restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.

I. CAA MEMBERS NEED TO PROVIDE TIME-SENSITIVE PACKAGE DELIVERY NOTIFICATIONS.

CAA members transport cargo throughout the world to meet customer demand. Our members transport more than 87% of total domestic Revenue Ton Miles⁵ and sort and deliver millions of packages nightly. In the course of this business, our members need to notify package recipients of the shipment, arrival, or scheduled delivery date of a package; failed attempts to deliver specific packages; or that a package is available for pickup at a specific carrier location. Such notifications maximize convenience to package recipients, facilitate the timely delivery of packages, and allow CAA members to provide delivery services in an efficient, cost-effective manner.

Delivery notifications can also significantly reduce instances of package theft from front porches and building lobbies, which has become a nationwide problem.⁶ Incidents of package theft increase sharply around the winter holidays, and police report that some thieves will clear

⁵ FAA Aerospace Forecast, March 2011.

⁶ See, e.g., Gigi Barnett, *Stolen Packages From Front Porches a Statewide Trend*, CBS BALTIMORE (Dec. 29, 2011, 6:08 p.m.), <http://baltimore.cbslocal.com/2011/12/29/stolen-packages-from-front-porches-is-a-statewide-holiday-trend/>; Andrew Adams and Shara Park, *Christmas Packages Stolen From Front Porch Prompt Police Warnings*, DESERET NEWS (Nov. 30, 2011 5:53 p.m.), <http://www.deseretnews.com/article/705395157/Christmas-packages-stolen-from-porch-prompt-police-warnings.html>; Jack Durschlag, *Police Blotter: Shoplifting, Stolen UPS Packages*, WEST ORANGE PATCH (May 30, 2012), <http://westorange.patch.com/articles/police-blotter-shoplifting-stolen-ups-packages>; *Reports of Stolen Packages on the Rise*, CBS 2 CHICAGO (Dec. 22, 2011, 10:06 p.m.), <http://chicago.cbslocal.com/2011/12/22/reports-of-stolen-packages-on-the-rise/>; *German Village Sees Increase in Stolen Packages*, 10TV (Feb. 27, 2012, 4:42 p.m.), <http://www.10tv.com/content/stories/2012/02/27/columbus-german-village-sees-increase-in-stolen-packages.html>; *New Video Shows Another Alleged Package Theft*, KTRK (Dec. 16, 2011), <http://abclocal.go.com/ktrk/story?section=news/local&id=8469619>; Matthew Hathaway, *Tips to Avoid Having Holiday Packages Stolen off Your Doorstep*, ST. LOUIS POST-DISPATCH ONLINE (Dec. 21, 2010, 11:43 a.m.), http://www.stltoday.com/business/columns/savvy-consumer/tips-to-avoid-having-holiday-packages-stolen-off-your-doorstep/article_647edf42-0d2a-11e0-baaa-00127992bc8b.html.

an entire neighborhood of packages during these high-volume periods.⁷ In the Boston area, this past holiday season was one of the worst on record for package theft. As one local newspaper noted, “the dismal state of the economy – and the uptick in online shopping and shipping – seems to be making conditions ripe for porch-picking.”⁸

When signatures are required for delivery, one of our member carriers reports that making pre-delivery notification calls to residential recipients with wireline service improves the likelihood of a successful delivery by thirty percent. Its customer research indicates that sixty-one percent of residential recipients that missed a delivery did not know that the delivery was coming or when to expect delivery. Pre-delivery notification calls allow the package recipients to make arrangements for someone to be home and sign for the package or to make other arrangements with the package delivery company. For recipients that do not want to receive pre-delivery notification calls, our member companies allow them to opt out of receiving further calls, or if the recipient prefers, they can register to receive text or email notifications instead.

Unfortunately, because of uncertainty over the scope of the TCPA’s restrictions,⁹ CAA members currently provide only a limited number of consumer-friendly package notifications to wireless telephone numbers.¹⁰ CAA respectfully requests that the Commission recognize the public interest in receiving time-sensitive package notifications and issue a declaratory ruling

⁷ See, e.g., Sarah Batista, *Police See Increase in Stolen Holiday Packages*, WBTW (Dec. 6, 2011, 6:34 p.m.), <http://www.wbtv.com/story/16203543/police-see-increase-in-stolen-holiday-packages>.

⁸ Stephanie Ebbert and Brian R. Ballou, *Gift Deliveries Prove Ripe for Theft*, BOSTON GLOBE (December 22, 2011), http://articles.boston.com/2011-12-22/news/30547494_1_packages-fruit-basket-porches.

⁹ The Commission may issue a declaratory ruling terminating a controversy or removing uncertainty. 47 C.F.R. § 1.2.

¹⁰ For example, some consumers have provided their wireless telephone number to a CAA member as part of an account with that member.

that will enable CAA members to contact package delivery recipients on their wireless telephone numbers.

II. THE COMMISSION SHOULD CONFIRM THAT DELIVERY COMPANIES CAN RELY ON REPRESENTATIONS FROM PACKAGE SENDERS TO ESTABLISH “PRIOR EXPRESS CONSENT” UNDER THE TCPA.

The TCPA requires parties to obtain “prior express consent” from the called party to place non-emergency calls using automatic telephone dialing systems (“autodialers”) or artificial or prerecorded voice messages to, *inter alia*, wireless telephone numbers.¹¹ Parties also must obtain prior express consent from the called party to place artificial or prerecorded voice calls and messages to residential telephone numbers, subject to certain exemptions.¹²

Through this Petition, CAA asks the Commission to clarify that, in certain limited circumstances, prior express consent to receive autodialed and prerecorded non-telemarketing calls and messages (including text messages) on wireless telephones under the TCPA can be provided through an intermediary or associated third party. The Commission should confirm that delivery companies can rely on representations from package senders that a package recipient consents to receiving autodialed and prerecorded customer service notifications regarding the shipment. Specifically, the provision of a package recipient’s wireless telephone number by a package sender should establish prior express consent for shipping companies to send notifications related to that package.

¹¹ 47 U.S.C. § 227(b)(1)(A); *see also* 47 C.F.R. § 64.1200(a)(1). The Commission has held that short message service (“SMS”) messages are “calls” under the TCPA. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 165 (2003).

¹² 47 U.S.C. § 227(b)(1)(B); *see also* 47 C.F.R. § 64.1200(a)(2). As discussed below, the Commission has already exempted package shipment and delivery notifications from the TCPA’s restriction on prerecorded voice message calls to residential telephone numbers.

A package sender initiates a shipment and provides all of the necessary information – including the recipient’s address and contact information – to the delivery company. By providing the sender with a contact telephone number, the recipient has authorized calls to that number regarding the delivery, whether by the delivery company or by any other member of the supply chain that facilitates delivery. Thus, there is a preexisting relationship between the package recipient and the package sender (on whose behalf the notification call is made). The package sender is effectively acting as an intermediary or associated party for the package recipient, consistent with the flow of goods within the supply chain.

CAA members, on the other hand, typically do not have any direct contact with package recipients until the package has been shipped (and usually only at the time of delivery). Delivery companies must rely on the information provided by the sender to complete the transaction and have no other way of contacting a package recipient. In fact, it would be impossible for them to provide millions of package notifications each day if they first had to obtain consent independently from each package recipient.¹³ For example, manually dialing a wireless telephone number to provide a notification – or even to seek separate consent – is not an option due to the number of packages delivered each day.

The Commission has previously recognized that a party that obtains consent or other authority to make an automated call can transfer that consent to an associated party. For example, in 2008, the Commission found that third-party debt collectors could place autodialed and prerecorded message calls to wireless telephone numbers that had been provided in connection with an existing debt, stating that such calls “are made with the ‘prior express

¹³ See also, e.g., Petition for Expedited Declaratory Ruling and Clarification, GroupMe, Inc., CG Docket No. 02-278, 16, 18 (filed Mar. 1, 2012) (noting that obtaining consent directly from a text message recipient “is not possible in all instances even when the recipient . . . would like to receive the text message”).

consent’ of the called party.¹⁴ In addition, the Commission in 2005 clarified that State Farm agents could rely on State Farm’s existing business relationship with policyholders to place otherwise restricted telemarketing calls to those policyholders on behalf of State Farm.¹⁵ The Commission should likewise confirm here that package senders can transfer consent for delivery companies to place autodialed and prerecorded non-telemarketing calls and messages to the wireless telephone numbers of package recipients.

Confirming the ability of delivery companies to rely on representations from package senders would also be consistent with the Commission’s recent *Robocall Report and Order*.¹⁶ In that decision, the Commission acknowledged that “wireless services offer access to information that consumers find highly desirable.”¹⁷ It highlighted the benefits of informational calls to wireless telephone numbers – including package delivery calls – and affirmed that it did not want to “impede” or “unnecessarily restrict” these “highly desirable” calls.¹⁸

III. ALTERNATIVELY, THE COMMISSION SHOULD DECLARE THAT PACKAGE DELIVERY NOTIFICATIONS ARE EXEMPT FROM THE TCPA’S RESTRICTION ON AUTODIALED AND PRERECORDED CALLS AND MESSAGES TO WIRELESS TELEPHONE NUMBERS.

The TCPA grants the Commission authority to exempt certain calls and messages from its restrictions. For example, it can exempt, from the restriction on autodialed and prerecorded calls and messages, such calls and messages to wireless telephone numbers “that are not charged

¹⁴ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559 ¶ 9 (2008).

¹⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, Declaratory Ruling, 20 FCC Rcd 13664 (2005).

¹⁶ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 12-21 (rel. Feb. 15, 2012) (“*Robocall Report and Order*”).

¹⁷ *Id.* ¶ 29.

¹⁸ *Id.* ¶¶ 21, 29.

to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights the provision is intended to protect.”¹⁹ Although package delivery notifications are already exempt from the TCPA’s restriction on prerecorded voice message calls to residential telephone numbers,²⁰ the Commission has not exempted such notifications from the restriction on autodialed and prerecorded voice calls and messages to wireless telephone numbers. The Commission should recognize the public interest in receiving time-sensitive package notifications and issue a declaratory ruling clarifying that such notifications made through autodialed and prerecorded calls and messages (including text messages) are not restricted by the TCPA.

CAA appreciates and supports the TCPA’s goal of restricting a barrage of telemarketing calls to wireless (and residential) telephone numbers. Package delivery notifications, however, do not involve any telemarketing, solicitation, or advertising. Nor do they trigger the other concerns that Congress was attempting to address through the TCPA, such as dialing random or sequential numbers and endangering public safety by tying up blocks of telephone lines.²¹ And there is no invasion of privacy resulting from these notifications, as they are connected to packages already being delivered to a recipient’s home or other designated address.

The benefits to consumers, and the reality of today’s communications landscape, underscore the need for the Commission to find that the TCPA was not intended to restrict these

¹⁹ 47 U.S.C. § 227(b)(2)(C) (stating that the Commission may make such exemption “by rule or Order”). The Commission has exempted autodialed and prerecorded message calls from wireless carriers to their customers when the customer is not charged. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 ¶ 43 (1992).

²⁰ See 47 C.F.R. § 64.1200(a)(2)(iii) (providing an exemption for calls made for a commercial purpose but that do not include or introduce an unsolicited advertisement or constitute a telephone solicitation); see also 47 C.F.R. § 64.1200(a)(2)(iv) (providing an exemption for calls to persons with whom the caller has an established business relationship at the time the call is made).

²¹ See, e.g., S. Rep. No. 102-178, at 1-2 (1991), reprinted in 1991 U.S.C.C.A.N. 1968, 1969; H.R. Rep. No. 102-317, at 10 (1991); 137 Cong. Rec. 35303 (1991); 137 Cong. Rec. 30821 (1991).

brief notifications. As noted above, members of the all-cargo air carrier industry provide an important public service both by, for example, notifying package recipients of a shipment or an intended delivery date and by informing them that an attempted delivery has failed. In the latter case, such calls may also notify the package recipient where a package can be picked up if a delivery has failed. These notifications maximize consumer convenience and promote timely, efficient, and cost-effective package delivery services. The notifications are sent only when a package is being delivered, and only to the intended package recipient. Moreover, as explained in Section II, it would be impossible for delivery companies to provide millions of package notifications each day if they first had to obtain consent independently from each package recipient. They have no alternative but to rely on the information provided by the package sender, and the volume of packages delivered each day requires the use of autodialed or prerecorded calls and messages.

In addition, in today's world there is an ever-shrinking difference between residential and wireless telephone numbers. Indeed, a growing percentage of U.S. households are abandoning residential service – almost one-third of all households only have wireless telephones,²² and more than half of consumers aged 25-29 are living in wireless-only households.²³ As a reflection of this trend, a CAA member has indicated that for residential deliveries, more than half of the phone numbers provided by package shippers are mobile numbers; consequently, this represents

²² See, e.g., CDC Study: Wireless Substitution: Early Release of Estimates From The National Health Interview Survey, July-December 2010, *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.htm>; see also Wireless Substitution: State-Level Estimates from the National Health Interview Survey, January 2007-June 2010, National Health Statistics Reports (Apr. 20, 2011), *available at* <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf> (finding that the percentage of wireless-only U.S. households doubled from 2007 to 2010).

²³ Lance Whitney, *Over Half of Late-20s Crowd Own Cell Phones Only*, CNET (Dec. 22, 2010), *at* http://news.cnet.com/8301-1035_3-20026395-94.html.

a significant population of package recipients that are not receiving the benefit of pre-delivery notification calls.

Alongside the growth in wireless-only households has been the evolution of wireless service away from per-minute charges. Many consumers now no longer incur any per-call charges for wireless service, instead opting for buckets of minutes and unlimited calling and messaging plans. An isolated, brief notification (*e.g.*, as a short prerecorded message or a text message related to a specific package delivery) would generally not impose additional charges. Thus, the Commission can find that delivery notifications now constitute calls “that are not charged to the called party.” In addition, as noted above, CAA’s member companies enable consumers to opt out of receiving future notifications.

IV. CONCLUSION

For the foregoing reasons, CAA urges the Commission to confirm that delivery companies can rely on representations from package senders that a package recipient consents to receiving autodialed and prerecorded customer service notifications regarding the shipment. Alternatively, the Commission should declare that package delivery notifications are exempt from the TCPA’s restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen A. Alterman". The signature is written in a cursive style with a long horizontal flourish at the end.

Stephen A. Alterman
President
Cargo Airline Association
1620 L Street, NW
Suite 610
Washington, D.C. 20036
202-293-1030
salterman@cargoair.org

August 17, 2012