

June 10, 2013

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentations
CG Docket No. 02-278**

Dear Ms. Dortch:

On Thursday, June 6, 2013, Michele C. Farquhar and Mark W. Brennan of Hogan Lovells US LLP, counsel to the Cargo Airline Association (“CAA”), along with Gina Ronzello, Vice President of Legislative Policy for CAA, and CAA member representative Bill Brown, met with Priscilla Delgado Argeris and Brenda Villanueva from Commissioner Rosenworcel’s office to discuss CAA’s pending Petition for Expedited Declaratory Ruling (“Petition”) regarding CAA members’ ability to send non-telemarketing package delivery notifications under the Telephone Consumer Protection Act (“TCPA”).¹ They also met with Nick Degani and Josh Cox from Commissioner Pai’s office on June 7 to discuss the same matter.

As discussed in the attached slides that were distributed at the meetings, the CAA representatives explained that granting the Petition and enabling non-telemarketing package delivery notifications to wireless telephone numbers would maximize convenience for consumers, facilitate the timely delivery of packages, and reduce the serious problem of package theft. The representatives encouraged the Commission to confirm that package delivery companies have “prior express consent” from package recipients when sending delivery notifications under the circumstances identified in the Petition. Specifically, a package sender – which can be a friend, relative, merchant, or similar intermediary – 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 package sender with a contact telephone number, the package 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. Because there is no public directory of wireless telephone numbers, the package sender must have obtained the telephone number from the recipient, and the Commission has already confirmed that the provision of a wireless telephone number by the recipient is sufficient to establish “prior express consent.” Therefore, the Commission should confirm that the provision of a package recipient’s wireless telephone number by a package sender (a friend, relative, merchant, or similar intermediary) constitutes “prior express consent” for

¹ *Petition for Expedited Declaratory Ruling*, Cargo Airline Association, CG Docket No. 02-278 (filed Aug. 17, 2012).

delivery companies to send autodialed and prerecorded, non-telemarketing customer service notifications related to that package.

In addition, the representatives explained that, as discussed in the Petition,² the Commission also has authority to declare that package delivery notifications are exempt from the TCPA's restriction on autodialed and prerecorded calls and messages to wireless telephone numbers. Specifically, the TCPA authorizes the Commission to exempt, from the restriction on autodialed and prerecorded calls and messages, such calls and messages to wireless telephone numbers "that are not charged 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."³ The TCPA also expressly authorizes the Commission to exempt such calls "by rule or order."⁴ Non-telemarketing package delivery notifications impose no new charges on package recipients or other consumers, as such notifications can already be made through live calls with manual dialing.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Mark W. Brennan

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² *Id.* at 6-9.

³ 47 U.S.C. § 227(b)(2)(C).

⁴ *Id.*

The Cargo Airline Association Petition and the Need for Package Delivery Notifications

June 7, 2013



The FCC should grant the CAA Petition and confirm that the provision of a package recipient's wireless telephone number by a package sender constitutes "prior express consent" for delivery companies to send autodialed and prerecorded, non-telemarketing customer service notifications related to that package.

Overview

- The Benefits of Package Delivery Notifications
- The Need for Prompt FCC Action
- The CAA Petition Has Widespread Support From Commenters
- Package Delivery Companies Have “Prior Express Consent” From Package Recipients
- A Grant Would Not Create Any Risk of New Unwanted Calls or Abusive Practices
- The FCC Can Also Exempt Delivery Notifications from the TCPA Restriction

The Benefits of Package Delivery Notifications

- Granting the CAA Petition and enabling package delivery notifications to wireless telephone numbers would:
 - maximize convenience for consumers,
 - facilitate the timely delivery of packages, and
 - reduce the serious problem of package theft.
- They can significantly reduce the potential for package theft from front porches, building lobbies, and other locations, a serious nationwide problem that is expected to grow as consumers shift more of their spending online.

The Benefits of Package Delivery Notifications (cont'd)

- Delivery notifications allow package recipients to arrange for someone to be home and receive the package or make other arrangements with the package delivery company.
 - The Better Business Bureau now recommends that package recipients take certain steps to protect packages, such as using tracking numbers and requesting deliveries that require signatures.
 - Package delivery notifications would be a powerful additional tool for consumers to help protect against package theft.
- They help consumers avoid having to travel to a distribution center to pick up a package (or risk missing the package entirely).
- They can reduce delivery costs for consumers by allowing CAA members to provide delivery services in an efficient, cost-effective manner.

The Benefits of Package Delivery Notifications (cont'd)

- Granting the CAA Petition would also advance the goals of the TCPA, including by enhancing consumer privacy in several ways.
- The notifications are sent only when a package is being delivered, and only to the intended package recipient.
- They make it easier for the actual package recipient to receive the package, instead of an unintended family member, roommate, house guest, front desk clerk, or other third party).
- Because the notifications are directly connected to packages already being delivered to a recipient's home or other designated address, there is no invasion of privacy related to the notification.

The Benefits of Package Delivery Notifications (cont'd)

- Moreover, prerecorded message and text message delivery notifications are no more intrusive than live voice calls (which are not restricted under the TCPA).
- These notifications can empower consumers that need to reschedule a delivery to a more convenient time.
- Notifications are also especially helpful to consumers in the context of an unwanted package because they can aid the recipient in preventing the unwanted package from arriving at his or her home.

The Need for Prompt FCC Action

- The continued growth of wireless-only households means that, unless the Commission grants the Petition, fewer and fewer package recipients will be able to receive notifications.
 - In 2012, 35.8% of Americans did not have landline phones.
 - Another 15.9% of households receive all or almost all calls on wireless telephones despite also having a landline telephone (“wireless-mostly”).
- CAA members can already notify landline customers about deliveries, and wireless customers should be able to receive the same services.

Package Delivery Companies Have “Prior Express Consent” From Package Recipients

- 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.
- Because there is no public directory of wireless telephone numbers, the package sender must have obtained the telephone number from the recipient, and the Commission has already confirmed that the provision of a wireless telephone number by the recipient is sufficient to establish “prior express consent.”

Package Delivery Companies Have “Prior Express Consent” From Package Recipients (cont’d)

- The Commission has also recognized that a party that obtains consent or other authority to make an automated call can transfer that consent to an associated party.
- **CAA members must be able to rely on the representations given by third parties.**

The CAA Petition Has Widespread Support From Commenters

- Commenters from a number of diverse industry sectors support the Petition.
 - They agree that the FCC should confirm that “prior express consent” under the TCPA can be provided by an intermediary or an associated third party for non-telemarketing package delivery notifications.
 - There is near-universal support for package notification services in the docket, except for the few TCPA plaintiffs who are looking to take advantage of potential class action suits.
- Commenters also agree that Congress never intended to target non-telemarketing, informational package delivery notifications. Instead, its goal was to curb abusive telemarketing practices that, among other things, threatened public safety by tying up emergency lines and blocks of telephone numbers.

A Grant Would Not Create Any Risk of New Unwanted Calls or Abusive Practices

- CAA members have no incentive to place unnecessary calls and messages because they would incur significant expenses to provide such notifications, far greater on a per-notification basis than any per-text message or per-call amount paid by a consumer (especially considering that, as the Commission has recognized, many consumers now have unlimited calling or texting plans).
- Delivery companies would also endeavor to avoid dialing the wrong telephone number because such calls would do nothing to assist with missed deliveries while still creating expenses for CAA members.
- Package senders should have no incentive to misrepresent the package recipient's consent.

A Grant Would Not Create Any Risk of New Unwanted Calls or Abusive Practices (cont'd)

- CAA members typically enable package recipients that do not want to receive delivery notifications to opt out of receiving further calls and messages, and CAA would not object if the Commission required CAA members to include an opt-out mechanism as a condition of granting the Petition.
- The current prerecorded message calls to wireline numbers include the ability to opt-out of future package delivery notification calls.
- Less than one-half of one percent of consumers called have chosen to opt out.

The FCC Can Also Exempt Delivery Notifications from the TCPA Restriction

- The TCPA authorizes the Commission to exempt, from the restriction on autodialed and prerecorded calls and messages, such calls and messages to wireless telephone numbers “that are not charged 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.” 47 U.S.C. § 227(b)(2)(C) (stating that the Commission may make such exemption “by rule or Order”).
- Package delivery notifications impose no new charges on package recipients or other consumers.

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