

July 11, 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* Presentation
CG Docket No. 02-278**

Dear Ms. Dortch:

On Tuesday, July 9, 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 Sean Lev, Suzanne Teatreault, Diane Griffin Holland, and Claude Aiken from the Commission’s Office of General Counsel and Mark Stone, Kurt Schroeder, and Lynn Follansbee from the Consumer & Governmental Affairs Bureau 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

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 (including gifts and other packages from third parties), and reduce the serious problem of package theft. The representatives encouraged the Commission to confirm that package delivery companies have “prior express consent” to send 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. 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.” As discussed in the Petition, the Commission has repeatedly recognized that parties may act through agents or other designees for purposes of the TCPA’s “prior express consent” requirements.² 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

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

² *Id.* at 5-6.

similar intermediary) constitutes “prior express consent” for delivery companies to send autodialed and prerecorded, non-telemarketing customer service notifications related to that package.

The representatives also explained that CAA members must be able to rely on the representations given by third parties and the contact information provided for the package. Delivery companies cannot always tell who is providing the contact information for the package or whether a particular package is a self-purchase, gift, or other transaction. Package senders, however, should have no incentive to misrepresent the package recipient’s consent, and they incur an expense to send the package.

In addition, the representatives explained that 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, as discussed in the Petition,³ 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.”⁴ The TCPA also expressly authorizes the Commission to exempt such calls “by rule or order.”⁵ 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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³ *Id.* at 6-9.

⁴ 47 U.S.C. § 227(b)(2)(C).

⁵ *Id.*