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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 Wednesday, September 11, 2013, as counsel to the Cargo Airline Association (“CAA”), I met with Kris Monteith, John B. Adams, Mark Stone, Lynn Follansbee, Kristi Lemoine, and Sara Kuehnle 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

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

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

² *Id.* at 5-6.

We also discussed why 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. I also noted that delivery companies do not control the purchase and checkout process that initiates many package delivery transactions, or the forms used to facilitate that process.

In addition, I explained that the Commission 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.³ Specifically, as discussed in the Petition,⁴ 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."⁵ The TCPA also expressly authorizes the Commission to exempt such calls "by rule or order."⁶

Consistent with its prior filings in this proceeding, CAA supports the Commission including the following conditions as part of an exemption for package delivery notifications:

1. A notification may only be sent to the telephone number provided for the package recipient.
2. Notifications must identify the name of the delivery company and include telephone or website contact information for the delivery company.
3. Notifications may not include any telemarketing, solicitation, or advertising content.
4. Voice call and text message notifications must be concise, generally one minute or less in length for voice calls and one message of 160 characters or less in length for text messages.
5. Delivery companies shall seek to minimize the number of notifications sent for each package; generally, only one notification (whether by voice call or text message) should be sent per package.
6. Delivery companies relying on this exemption must offer parties the ability to opt out of receiving future delivery notification calls and messages, and honor the opt-out requests.
7. Each notification must include information on how to opt out of future delivery notifications. Voice call notifications that are answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call. Text notifications must include the ability for the recipient to opt out by replying "STOP."

³ Package delivery notifications are already exempt from the TCPA's restriction on prerecorded voice message calls to residential telephone numbers. 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).

⁴ Petition at 6-9.

⁵ 47 U.S.C. § 227(b)(2)(C).

⁶ *Id.*

As CAA has explained previously, the Commission should find that non-telemarketing package delivery notifications impose no charges on package recipients, particularly if the FCC adopts the conditions outlined above.⁷ Delivery companies are already allowed to place delivery notifications to wireless telephone numbers using a live representative, and placing the notification with an autodialer or prerecorded message imposes no additional charges on consumers. In fact, enabling delivery notifications to wireless telephone numbers could ultimately lower costs for consumers – and save them time. For example, consumers will no longer have to call or search a delivery company’s website to obtain delivery or distribution center information, activities that not only take time but can also use up voice plan minutes or available data from a service plan with a mobile data limit. As noted above, delivery companies relying on an exemption would also need to include an opt-out mechanism for notification recipients.

Moreover, alongside the growth in wireless-only households has been the evolution of wireless service away from per-minute charges. As the Commission has recognized, many consumers now no longer incur any per-call or per-text message charges for wireless service, and instead have unlimited calling and texting plans.⁸

Exempting delivery notifications also would not create any risk of new unwanted calls or abusive practices. CAA members have no incentive to place unnecessary delivery notification calls and messages because they would incur significant expenses to provide such notifications. 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.

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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⁷ Reply Comments of the Cargo Airline Association, CG Docket No. 02-278, 8 (filed Nov. 30, 2012); see also Petition at 9.

⁸ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 27 FCC Rcd 15391 ¶ 10 (2012).