

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

EMERGENCY PETITION FOR SPECIAL TEMPORARY RELIEF

The Direct Marketing Association (“the DMA”) files this Emergency Petition for Special Temporary Relief to request that the Commission stay amended 47 C.F.R. § 64.1200(f)(8)(i)(A) and (B), until the Commission has decided the DMA’s Petition for Forbearance (“the Petition”), filed today in this docket and attached to this pleading.

Emergency Relief is needed because the disclosure rule that is the subject of the Petition will take effect in a matter of days. The issue could not have been raised with the Commission earlier because the discrepancy between the stated purpose for and explanation of the amendments to the TCPA¹ and the text of the new rule² is not readily apparent. The Federal Communications Commission’s (“FCC”) explanation of the rule is consistent with the Federal Trade Commission’s (“FTC”) rule governing prerecorded marketing calls,³ with which legitimate businesses have complied in marketing to consumers. However, the new rule itself adds a disclosure that is not required under the FTC rule. Legitimate marketers, most of whom are subject to the FTC Rule, which took effect in 2009, had every reason to assume that the FCC’s Rule was entirely consistent with that of the FTC. It did not become apparent until the

¹ See TCPA Order at PP 32-34.

² See TCPA Order at 34.

³ 16 C.F.R. § 310.4(b)(v)(A)(ii).

past few days that, in fact, reliance on the FTC Rule (and its implicit extension to calls to cell phones and text messages) would not satisfy the formal terms of Section 64.1200(f)(8)(i)(A) and (B). As a result, these marketers did not have adequate notice of the necessity for a disclosure to consumers stating that sale is not conditioned upon written consent. Therefore, if the new rule is enforced, all consents obtained before October 16, 2013 will not be in compliance with the TCPA with the risks attendant to non-compliance, as outlined in the Petition.

The Direct Marketing Association therefore respectfully requests that the Commission temporarily stay the effective date of ---and only of --- 64.1200(f)(8)(i)(A) and (B)---until the outcome of such proceedings as it may hold upon the underlying Petition for Forbearance. A grant of this request will cause no irreparable harm to the public or to the public interest, since the stay the DMA seeks will not cause any delay in the implementation of the requirement that consent to place calls that are subject to Section 64.1200(f) must be in writing.

In light of the inconsistency between the FCC's interpretation of the new rule and the text of the new rule, the harm that will be caused by allowing the new disclosure regulation to take effect before it has been properly re-examined, and the lack of harm to the public interest, the DMA respectfully requests that the Commission immediately issue an order staying the effective date of 47 C.F.R. § 64.1200(f)(8)(i)(A) and (B) until it has made a decision on the DMA's Petition for Forbearance.

Respectfully submitted,

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