



November 27, 2013

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Petition of Coalition of Mobile Engagement Providers for Declaratory Ruling
Comments of the National Retail Federation**

The National Retail Federation submits the following comments with respect to the Petition for Declaratory Ruling filed by the Coalition of Mobile Engagement Providers. By way of background, NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. Many of NRF's members have long communicated with their customers via text messages. Too stringent an interpretation of the revised Telephone Consumer Protection Act rules would unnecessarily adversely affect both our members and their customers.

The revised rules are designed to ensure that individuals who might receive undesired autodialed or prerecorded telemarketing calls have the opportunity to block them. Effective October 16, 2013 such calls cannot be initiated unless the recipients have received a notice and provided express written consent. Unexpected, undesired prerecorded autodialed calls can be annoying and the revised rules seek to ensure that such random communications are not forced on individuals.

However, there is a subset of communications that do not bear the same characteristics as these calls. A number of retail companies and their customers have long exchanged text messages sent in response to a customer inquiry or request. Unlike an unsolicited telephone call, these text messages are created because the customer expressed an interest in receiving the

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information. For example, many consumers are familiar with an exchange in which they text a word to a favorite retailer in return for a code that entitles them to a significant discount: it is a solicited response. Similarly, the very nature of texting inherently implies – like an “out of office” message – that the sender on the other end is not individually dialing, but rather is using automated equipment triggered by a particular input. This is distinct from the randomness that automated dialing equipment might enable. Thus, the potentially negative elements of unexpected surprise associated with some prerecorded autodial calls are not present.

Customers who have participated in these programs, and who already exist in retailers’ customer files, have expressed a desire to receive these marketing communications even if they have not been specifically informed that the messages they receive were generated by an autodialer or (paradoxically for someone requesting a discount coupon) that their consent is not required to make a purchase. For the reasons expressed above, in these instances, there is not a consumer harm to be remedied.

Finally, for those customers who had requested periodic text alerts, in accordance with MMA Guidelines, subscribers may “opt out” of receiving additional text alerts at any time, typically effective within 24 hours, by texting the words STOP, CANCEL or QUIT to the short code from which the user wishes to be removed.

In conclusion, NRF supports the pending Petition, and asks that our members and their customers not be forced to abandon (or attempt to recreate from scratch) long standing relationships that do not carry the negative indicia of the kinds of communications toward which the Commission’s revised rules are directed.

Thank you for your consideration. Should you have any questions, please feel free to contact me (202.783.7971).

Sincerely,

A handwritten signature in black ink, appearing to read "Mallory B. Duncan". The signature is stylized and includes a large, sweeping flourish that extends to the right, ending in a horizontal line.

Mallory B. Duncan
Senior Vice President
General Counsel