

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
Consumer & Governmental Affairs Bureau	)	
Seeks Comment on Petition for	)	
Declaratory Ruling From a Coalition of	)	
Mobile Engagement Providers	)	CG Docket No. 02-278
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	

**Reply Comments of Neustar**

On October 17, 2013, the Coalition of Mobile Engagement Providers (“Coalition”) filed a petition<sup>1</sup> seeking a declaratory ruling from the Federal Communications Commission (“Commission”) that the Commission’s newly effective rules for compliance with the Telecommunications Consumer Protection Act (“TCPA”)<sup>2</sup> do not require entities that use text messaging to communicate with consumers to obtain new written consent from consumers who previously consented in writing to the receipt of Short Messaging Service (“SMS” or “text”) messages from the sender. In response to the *Public Notice*<sup>3</sup> issued by the Commission’s Consumer and Governmental Affairs Bureau on November 1, 2013, a number of parties filed comments on December 2, 2013. Neustar, Inc. (“Neustar”) files these comments in response to those parties and in support of the Coalitions’ request for a declaratory ruling.

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<sup>1</sup> See *Coalition of Mobile Engagement Providers*, Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Oct. 17, 2013) (*Petition*).

<sup>2</sup> See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, FCC 12-21, ¶ 20 (rel. Feb. 15, 2012) (“2012 TCPA Order”).

<sup>3</sup> See Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling from Coalition of Mobile Engagement Providers*, CG Docket No. CG 02-278, DA 13-2118 (rel. Nov. 1, 2013).

After reviewing the *Petition* filed by the Coalition and the comments filed by the various parties, Neustar believes that: 1) the plain language of the Commission’s order indicates that the Commission intended entities to be able to rely on written consent obtained prior to October 16, 2013, and 2) the application of well-settled administrative law principles dictate that the Commission’s new rules regarding written consent apply on a prospective basis only. Because many consumers have already provided written consent for the receipt of these text messages and because the Commission’s new rules should only be applied prospectively, the Commission should issue the declaratory ruling sought by the Coalition in order to clarify the issue to avoid unnecessary burdens on marketers, avert confusion and annoyance for consumers,<sup>4</sup> and discourage frivolous litigation.<sup>5</sup>

**I. THE COMMISSION’S RULES REGARDING PRIOR WRITTEN CONSENT DO NOT REQUIRE ENTITIES TO OBTAIN NEW WRITTEN CONSENT FROM CONSUMERS WHO HAVE PREVIOUSLY PROVIDED WRITTEN CONSENT**

Neustar agrees with the Coalition and others that the plain language of the Commission’s order adopting the new rules requiring prior written consent before a telemarketer can lawfully contact a consumer does not require that companies engaged in mobile marketing campaigns obtain consent from consumers from whom written consent has previously been provided.<sup>6</sup> As noted by CTIA, the Commission’s order stated that “once [the Commission’s] written consent rules become effective . . . an entity will no longer be able to rely on non-written forms of

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<sup>4</sup> See, *mBlox Comments* at 5.

<sup>5</sup> See *Petition* at 12.

<sup>6</sup> See *Petition* at 6, *CTIA Comments* at 3.

express consent to make autodialed or prerecorded voice telemarketing calls and thus could be liable for making such calls absent prior written consent.”<sup>7</sup>

The Coalition points out that a “consumer generated text message opt-in, where a user opts-in to receive messages by submitting their phone number electronically, satisfies the Commission’s standard for express written consent under the Commission’s rules and under the Electronic Signatures in Global and National Commerce Act (“E-SIGN Act”).”<sup>8</sup>

Acknowledgement of this form of written consent is made clear in the 2012 TCPA Order and the rules that accompanied it.<sup>9</sup>

Neustar agrees with CTIA and the Coalition that this language can only mean that if an entity has previously obtained written consent from a consumer in the form of a consumer generated text message opt-in, the entity satisfies the Commission’s prior written consent rules and does not need to solicit the consumer for additional consent.

## **II. THE COMMISSION’S 2012 TCPA RULES SHOULD NOT BE RETROACTIVELY APPLIED**

As CTIA points out, the prior written consent obtained by mobile marketers through consumer generated text message opt-in complied with the Commission’s rules at the time the

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<sup>7</sup> *CTIA Comments* at 3, citing the *2012 TCPA Order* at ¶68 (emphasis added by CTIA).

<sup>8</sup> *Petition* at fn 8.

<sup>9</sup> *See 2012 TCPA Order*, ¶ 12; *see also* 47 C.F.R. § 64.1200(f)(8)(ii) (defining a “signature” under the “prior express written consent” definition of the new rules to include “an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law”); 15 U.S.C. § 7001(a).

consent was given.<sup>10</sup> Given the long standing principle that administrative rules can only be applied prospectively,<sup>11</sup> the rules that became effective on October 16, 2013 should not be applied in a manner that nullifies lawful prior written consent obtained prior to that date.

Neustar agrees with the Coalition that requiring new opt-in from consumers who already provided prior written consent that was consistent with the rules in place at the time the consent was given will be unnecessarily burdensome to mobile marketing companies.<sup>12</sup> Of greater concern, however, is the consumer confusion and annoyance that may result from requiring marketers to obtain new opt-ins from consumers who believe they have already provided the necessary consent. Rather than benefitting consumers, application of the 2012 TCPA rules in this manner may only serve to perturb them.

It will be much less intrusive to consumers who provided written consent before October 16 to simply permit that consent to stand and to allow consumers who no longer wish to receive text messages from a mobile marketer to use the well established procedures for opting-out of such messages. All mobile marketers are required to operate in accordance with CTIA's *Mobile Commerce Compliance Handbook* and its *Compliance Assurance Program* that set the standards for compliance with, among other things, the Commission's TCPA rules, including opt-in and opt-out requirements. Rather than requiring mobile marketers to send new solicitations for consent to the millions of Americans who believe that they have already provided consent, a consumer that no longer wishes to receive messages from a mobile marketer simply needs to send STOP, END, CANCEL, UNSUBSCRIBE, or QUIT in reply to one of the mobile marketing

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<sup>10</sup> *CTIA Comments* at 5.

<sup>11</sup> *See Petition* at 8, *CTIA Comments* at 4.

<sup>12</sup> *See Petition* at 10.

messages the consumer had previously consented to receive. This will end the unwanted messages without confusing consumers or inundating them with requests for new consents.

**III. CONCLUSION**

For the reasons stated above, Neustar urges the Commission to issue the declaratory ruling sought by the Coalition.

Respectfully submitted,

A handwritten signature in dark ink, reading "Richard L. Fruchterman, III". The signature is written in a cursive style with a large, stylized initial "R" and "F".

Richard L. Fruchterman, III

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