

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Consumer & Governmental Affairs Bureau)	CG Docket No. 02-278
Seeks Comment on Revised TCPA Exemption)	
Proposal From the Cargo Airline Association)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	

REPLY COMMENTS OF THE CARGO AIRLINE ASSOCIATION

I. INTRODUCTION

The Cargo Airline Association (“CAA”)¹ respectfully submits these reply comments in response to the December 3, 2013 Public Notice (“Public Notice”) released by the Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceeding.² The Public Notice seeks comment on the Cargo Airline Association’s (“CAA”) revised Telephone Consumer Protection Act (“TCPA”) exemption proposal,³ which supplements CAA’s earlier Petition for Expedited Declaratory Ruling (the “Petition”) regarding non-telemarketing package delivery notifications.⁴ As discussed below, the Federal Communications Commission

¹ CAA is the nationwide trade organization representing the interests of the United States all-cargo air transportation industry. CAA members include ABX Air, Atlas Air, Capital Cargo, DHL, FedEx Express, Kalitta Air and UPS Airlines.

² *Consumer & Governmental Affairs Bureau Seeks Comment on Revised TCPA Exemption Proposal From the Cargo Airline Association*, CG Docket No. 02-278, Public Notice, DA 13-2312 (rel. Dec. 3, 2013).

³ Notice of *Ex Parte* Presentation, Cargo Airline Association, CG Docket No. 02-278 (Nov. 19, 2013) (“November *Ex Parte*”).

⁴ *Petition for Expedited Declaratory Ruling*, Cargo Airline Association, CG Docket No. 02-278 (filed Aug. 17, 2012) (“Petition”).

(“Commission”) should grant the requested exemption and enable consumer-friendly package delivery notifications to wireless users.

Background. As part of its Petition, CAA asked the Commission to confirm that non-telemarketing package delivery notifications are exempt from the TCPA restriction on autodialed and prerecorded calls and text messages to wireless telephone numbers.⁵ Specifically, CAA requested that the Commission use its authority under the TCPA to exempt autodialed and prerecorded 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.”⁶ In its November *Ex Parte*, CAA described the option available today to send free-to-end-user (“FTEU”) text messages to approximately 88% of the wireless telephone numbers that are provided as contact information for residential package deliveries.⁷ In addition, CAA acknowledged that certain conditions could be imposed on the requested exemption, including an opt-out mechanism for wireless users.⁸

⁵ *Id.* at 6-9.

⁶ *See id.*; *see also* 47 U.S.C. § 227(b)(2)(C). CAA also requested that the Commission confirm that delivery companies can rely on representations from package senders that a package recipient consents to receiving autodialed and prerecorded package delivery notifications through wireless telephone numbers. Petition at 4-6.

⁷ *See* November *Ex Parte* at 2

⁸ *Id.* The conditions discussed in the November *Ex Parte* are:

1. A notification may only be sent to the telephone number for the package recipient.
2. Notifications must identify the name of the delivery company and include 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. (cont’d)

Summary. Granting CAA’s requested exemption would provide significant benefits to American consumers, such as maximizing convenience, facilitating the timely delivery of packages, and significantly reducing the potential for package theft – all without imposing any charges on consumers. In addition, the requested exemption is narrow and could be subject to the robust conditions proposed in the November *Ex Parte* to help ensure that consumers’ privacy remains protected. It also would not create any risk of abusive practices or new unwanted voice calls or text messages.

Under the unique structure of the package delivery business, delivery companies often have no interaction with package recipients until the package is being delivered, and it is not practical for them to seek “prior express consent” directly from package recipients. Therefore, an exemption is requested to clarify that package delivery companies may provide delivery notifications to wireless telephone numbers, which account for an increasing percentage of the telephone numbers that are provided as contact information for residential package deliveries.

The Commission should also disregard suggestions from one commenter that website-based opt-in approaches to package delivery notifications are an alternative solution. Relying solely on an opt-in framework would impose a significant burden on consumers, including the 20% of Americans without a smartphone or home broadband services.⁹ It would also lead to countless additional missed package deliveries and severely limit a service that is highly beneficial to and popular with consumers.

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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.”

⁹ Pew Research Center, HOME BROADBAND 2013 (Aug. 26, 2013), *available at* http://www.pewinternet.org/~media/Files/Reports/2013/PIP_Broadband%202013_082613.pdf (last accessed Dec. 20, 2013).

II. A NARROW EXEMPTION FOR NON-TELEMARKETING DELIVERY NOTIFICATIONS WILL GENERATE SIGNIFICANT CONSUMER BENEFITS

No commenter disputes the substantial benefits that non-telemarketing package notifications provide to consumers. As previously discussed by CAA, package delivery notifications maximize convenience for package recipients, facilitate the timely delivery of packages, reduce delivery delays, and allow CAA members to provide delivery services in an efficient, cost-effective manner.¹⁰ They can also significantly reduce the potential for package theft from front porches, building lobbies, and other locations, which remains a nationwide problem¹¹ that is expected to grow as consumers shift more of their spending online.¹² For example, delivery notifications allow package recipients to arrange for someone to be home and receive the package or make other arrangements with the package delivery company. Delivery notifications also help consumers avoid contacting a delivery company or searching 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. In addition, they help consumers avoid having to travel to a distribution center to pick up a package (or risk missing the package entirely).¹³

¹⁰ See Reply Comments of the Cargo Airline Association, CG Docket No. 02-278, 3-4 (Nov. 30, 2012) (“CAA 2012 Reply Comments”); see also Reply Comments of the American Bankers Association and the Consumer Bankers Association in Support of the Revised TCPA Exemption Proposal from the Cargo Airline Association, CG Docket No. 02-278, 4-5 (Dec. 20, 2013) (“ABA and CBA Reply Comments”).

¹¹ See Petition at 2-3; see also, e.g., Amber Lee, *Holiday Season Brings Doorstep Package Thieves*, KTVU.com, Dec. 18, 2013, available at <http://www.ktvu.com/news/news/crime-law/holiday-season-brings-doorstop-package-thieves/ncPYz> (last accessed Dec. 23, 2013); Emma G. Fitzsimmons, *Holiday Boxes on Stoops Bring Reports of Thefts*, N.Y. TIMES, Dec. 7, 2012, available at http://www.nytimes.com/2012/12/08/us/thefts-a-concern-as-holiday-deliveries-increase.html?_r=0 (last accessed Dec. 20, 2013).

¹² See, e.g., Daniel Bukszpan, *Avoiding Holiday Package Theft*, CNBC (Nov. 16, 2012, 4:51 p.m.), available at <http://www.cnn.com/id/49859299> (last accessed Dec. 23, 2013).

¹³ See CAA 2012 Reply Comments at 3-4.

Package notifications also advance the TCPA's consumer privacy goals, contrary to the assertions made by Joe Shields.¹⁴ For example, package notifications make it easier for the intended package recipient to receive the package instead of a family member, roommate, house guest, front desk clerk, or other party. Notifications also aid the package recipient in preventing unwanted packages from arriving at his or her home. Furthermore, as CAA has previously discussed, the notifications are directly connected to packages that are already scheduled for delivery to a recipient's home or other designated address.¹⁵ In addition, as noted above, the TCPA expressly allows the Commission to incorporate privacy considerations when granting an exemption."¹⁶ In this case, CAA has acknowledged that the Commission may adopt conditions to ensure that all privacy concerns are addressed.¹⁷

Additionally, the Petition requests only a narrow exemption. It does not, as Mr. Shields asserts, seek a "blanket exemption from prior express consent of the called party for all automatically dialed calls to cell numbers where the called party is not charged for the call."¹⁸ Rather, as CAA has explained, CAA's exemption request is limited to enabling consumer-friendly, non-telemarketing package delivery notifications that are not charged to the called party.¹⁹ Moreover, one of the conditions that the Commission could adopt is an opt-out mechanism that would allow package recipients to opt out after the first (or potentially even

¹⁴ Joe Shields Comments on the Revised Exemption Proposal of the Cargo Airline Association, CG Docket No. 02-278, 1 (Dec. 17, 2013) ("Comments of Joe Shields").

¹⁵ See CAA 2012 Reply Comments at 7.

¹⁶ 47 U.S.C. § 227(b)(2)(C).

¹⁷ See November *Ex Parte* at 2.

¹⁸ Comments of Joe Shields at 2.

¹⁹ See CAA 2012 Reply Comments at 3; see also ABA and CBA Reply Comments at 8.

before the first) delivery notification.²⁰ Furthermore, the notifications are sent only when a package is being delivered, and only to the intended package recipient.

In its comments, GroupMe argues in favor of much broader relief.²¹ Specifically, GroupMe seeks a declaration from the Commission that “intermediary consent constitutes ‘prior express consent’ under the TCPA when calls or text messages are non-commercial, administrative or informational.”²² Although CAA supports such a broad clarification by the Commission,²³ it is not necessary for the Commission to reach this larger question to grant CAA’s exemption request. Nor should the Commission deny CAA’s Petition simply because other parties would prefer a more comprehensive relief.

Granting the narrow relief requested by CAA’s Petition would not create any risk of abusive practices or new unwanted voice calls or text messages. As CAA has explained, CAA members incur significant expenses to provide such notifications and therefore have no incentive to place unnecessary delivery notification calls or messages.²⁴ For the same reason, delivery companies would strive to avoid calling the wrong telephone number. Additionally, there are only a limited number of package delivery companies, facilitating easy oversight and rapid response by the Commission should any concerns arise.

²⁰ See November *Ex Parte* at 2.

²¹ See GroupMe Inc.’s Comments, CG Docket No. 02-278, at 2-5 (Dec. 17, 2013) (“GroupMe Comments”).

²² *Id.* at 1.

²³ See Petition at 1; Comments of the Cargo Airline Association, CG Docket No. 02-278, 1-3 (Aug. 30, 2012).

²⁴ See CAA 2012 Reply Comments at 8-9; November *Ex Parte* at 2-3.

III. THE UNIQUE NATURE OF PACKAGE DELIVERY SERVICES MAKES IT IMPRACTICAL TO OBTAIN “PRIOR EXPRESS CONSENT” DIRECTLY FROM PACKAGE RECIPIENTS

Package delivery companies frequently do not have any interaction with the individual receiving the packages until the time of delivery. This unique business structure makes it impractical for package delivery companies to directly obtain “prior express consent” from the called party, as one commenter recommends.²⁵ Package delivery companies cannot, for example, obtain consent directly from the package recipient at the point of sale, while a transaction is pending or, indeed, at any other point. Delivery services are also very time-sensitive, and it is not feasible for delivery companies to try to contact millions of package recipients each day using live operators and manual dialing.

Mr. Shields highlights as an alternative the possibility for customers to opt-in via a website, but this suggestion is misguided and unworkable. Every single household in the United States is a potential package recipient. Although delivery company opt-in websites provide an avenue for more frequent package recipients to specify their delivery and notification preferences, many millions more will inevitably not avail themselves of these options, particularly the 20% of Americans that do not have a smartphone or home broadband.²⁶

Moreover, as CAA has previously discussed, a direct opt-in system would require *each* delivery company to collect and maintain opt-in information from essentially every individual that relies on a wireless telephone number, even though delivery companies typically do not

²⁵ See Comments of Joe Shields at 1-2.

²⁶ Pew Research Center, HOME BROADBAND 2013 (Aug. 26, 2013), *available at* http://www.pewinternet.org/~media/Files/Reports/2013/PIP_Broadband%202013_082613.pdf (last accessed Dec. 20, 2013).

communicate directly with package recipients until (at the earliest) a delivery is in progress.²⁷ An opt-in only approach would also cause significant confusion for consumers, who must keep track of the delivery companies to which they have provided a direct, express opt-in and who risk not receiving a desired notification (and missing a package) from other delivery companies.

The unique scope of package delivery companies' operations also places them in particular need of the relief requested in CAA's Petition. Potentially reaching every household in the United States implies that the class size for any TCPA violation could encompass millions of individuals with correspondingly ruinous statutory penalties. This extreme litigation risk will hinder the provision of consumer-friendly package delivery notifications to wireless numbers.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant CAA's exemption request and declare that non-telemarketing package delivery notifications are exempt from the TCPA's restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.

Respectfully submitted,



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²⁷ CAA 2012 Reply Comments at 10-11.