

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

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. CG 02-278
Telephone Consumer Protection Act of 1991)
)
Petition for Declaratory Ruling of the Retail)
Industry Leaders Association (RILA))

To: The Commission

COMMENTS OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

These comments are submitted for the record to the Federal Communications Commission (FCC) on behalf of the National Federation of Independent Business (NFIB) and the NFIB Small Business Legal Center in support of the Retail Industry Leaders Association Petition for Declaratory Ruling in the above referenced proceeding.

NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C. and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 independent business owners who are located throughout the United States, including many farming members that will be affected by this notice. The NFIB Small Business Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in

Protecting the Rights of America's Small Business Owners

National Federation of Independent Business

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the nation's courts through representation on issues of public interest affecting small businesses.

NFIB is concerned that a broad reading of the Telephone Consumer Protection Act (TCPA) rules effective October 16, 2013, will result in lawsuit abuse with retailers being sued under the TCPA for providing information that customers specifically request.

The TCPA is already a catalyst for frivolous litigation. It has created a cottage industry of fax-spam litigation, allowing plaintiffs to recover \$500-\$1500 per fax by calling businesses, requesting information, and then suing if faxes do not contain what the FCC contends to be an adequate opt-out notice. The NFIB Small Business Legal Center is currently supporting small business owner, Douglas Walburg, in a petition he has filed with the U.S. Supreme Court. Mr. Walburg is currently defending against a \$48 million dollar class-action lawsuit, which alleges that he failed to include an opt-out notice in faxes he sent to people who expressly asked to receive them.

NFIB respectfully requests that the FCC affirmatively declare that the TCPA rules effective October 16, 2013 do not apply to isolated, immediate, one-time responses to consumer-initiated requests for text offers. Retailers should not have to fear TCPA liability or a lawsuit for texting a consumer with a specific offer or coupon that he or she requests.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me directly at 202-314-2061.

Sincerely,

A handwritten signature in black ink that reads "Karen R. Harned". The signature is written in a cursive style with a large, prominent "K" and "H".

Karen R. Harned
Executive Director
National Federation of
Independent Business
Small Business Legal Center
February 21, 2014