

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

In the Matter of

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

Santander Petition for Expedited  
Declaratory Ruling Regarding  
Revocation of Consent

CG Docket No. 02-278

**COMMENTS OF THE  
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

CCIA respectfully submits these comments in support of the Petition for Expedited Declaratory Ruling filed by Santander Consumer USA, Inc (Santander).<sup>1</sup> CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ more than 600,000 people and generate annual revenues in excess of \$465 billion. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries.<sup>2</sup>

The Petition filed by Santander asks the Commission to clarify whether prior express consent can be revoked under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), or in the alternative to specify valid methods for revoking consent (Pet. at 1). CCIA urges the Commission to grant the Santander Petition because businesses and other organizations

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<sup>1</sup> *Santander Petition for Expedited Declaratory Ruling Regarding Revocation of Consent*, CG Docket No. 02-278 (filed July 10, 2014) (“Santander Petition” or “Petition”); *see also Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling filed by Santander Consumer USA, Inc.*, Public Notice, CG Docket No. 02-278, DA 14-1122 (rel. Aug. 1, 2014).

<sup>2</sup> A list of CCIA’s members is available online at <http://www.ccianet.org/members>.

need clarity in determining (i) when consent can be revoked, and (ii) obligations when consent has been revoked. Penalizing businesses that work diligently to obtain user consent before engaging in voice or text communication with the consenting user serves no purpose, creates potential liability for activity beyond a business's control, discourages our member companies from communicating with consenting users, and may, in the end, chill innovation.<sup>3</sup>

**I. The FCC should specify circumstances under which consent can and cannot be revoked.**

The TCPA provides an explicit exception for calls made for emergency purposes.<sup>4</sup> However, neither the statute nor FCC rulemaking clarify what constitute “emergency purposes.” As telecommunications technologies have become integral to modern life, the ability to reach individuals as quickly and efficiently as possible is critical. Messages relating to general well-being of an individual, be it physical health, financial “red flags,” or other matters relating to safety and security should be exempt from the consent requirements of the TCPA. These could be calls such as doctor appointment reminders, alerts of suspicious activity on a financial account, password resets, or general observations of anomalous activity on a user accounts. The interests of users are well served by such calls, as these calls are intended to protect the user.

Moreover, calls intended to communicate important information rather than to offer property, goods, or services are not solicitations, and should be exempted under the rubric of “emergency purposes.” The Commission has recognized as much in its 2012 rulemaking, when it exempted solicitations containing a “health care” message made to mobile phones and landlines from the consent requirements under the TCPA.<sup>5</sup> Unfortunately, the Commission did

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<sup>3</sup> Although these comments refer to “users,” the term should also be read to include “subscribers” and “customers”.

<sup>4</sup> 47 U.S.C. § 227(b)(1)(A); 47 U.S.C. § 227(b)(1)(B).

<sup>5</sup> FCC 12-21; 47 C.F.R. § 64.1200(a)(2). (“No person or entity may ... (i) initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in

not address whether consent was required for “health care” messages that do not contain a solicitation.

Finally, communications designed to prevent fraud or alert users to potential identity theft or negative financial impacts are critical to the safety and security of users. In such situations, time is of the essence and informing users of irregularities as quickly and efficiently as possible is essential to prevent otherwise avoidable losses. Such messages go beyond communications that are “expected or desired . . . between businesses and their customers<sup>6</sup>”; they give users the tools they need to protect themselves in the 21<sup>st</sup> century.

CCIA urges the Commission to specify that calls with the sole purpose of alerting users to, potential fraud, identity theft, or negative financial impacts, or mitigation thereof, fall under the definition of “emergency purposes,” and as such are exempt from the consent requirements of the TCPA.

## **II. Where consent can be revoked, companies should have sufficient time to receive, record, and process the revocation of consent.**

In circumstances where consent can be revoked, CCIA believes that companies must be provided adequate time to respond to revocation requests. Technical procedures and cost implications associated with revocation processing will vary across companies. As such, some companies will require more time to react to individual expressing a desire to no longer be contacted. The Commission has previously addressed the amount of time companies should be permitted to honor opt-out requests, and determined that 30 days was appropriate.<sup>7</sup>

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paragraphs (a)(1)(i) through (iii) of this section, other than . . . a call that delivers a ‘health care’ message made by, or on behalf of, a ‘covered entity’ or its ‘business associate,’ as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.”).

<sup>6</sup> H. REP. NO. 102-317, at 17 (1991).

<sup>7</sup> FCC 03-153; 47 C.F.R § 64.1200(d)(3) (“Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber’s do-not-call request within a reasonable time from the date such request is made. *This period may not exceed thirty days from the date of such request.*”) (*emphasis added*); FCC 14-32 ¶ 18 (“delivery companies . . . must honor the opt-out requests within a reasonable

Alternatively, the Commission has implied that five minutes is sufficient to process an opt-out request.<sup>8</sup> The Commission should recognize that there is a difference between receiving a revocation request, and processing that request. Companies may wish to send a confirmation notice once the revocation has been processed. However, in most situations, even if a company can confirm the request has been received within five minutes, it is unlikely that revocation requests can be processed within the same five minutes.

If the Commission now believes that a 30-day grace period is no longer appropriate, five minutes hardly seems a reasonable alternative. In defining a safe harbor for ported wireless numbers, the Commission gave companies at least 15 days to complete the updating of internal records.<sup>9</sup> CCIA believes that similarly allowing companies 15 days to receive, record, and process a revocation of consent provides a fair and reasonable balance of the needs of businesses with the privacy interests of users.

CCIA therefore urges the Commission to specify that once a revocation request is received, a company should act on the request within a reasonable time from the date such request is made, not to exceed 15 days. During that 15 day period, any previously obtained prior express consent or prior express written consent remains valid, and companies shall not be liable under the TCPA for messages inadvertently sent within this intermediary time frame.

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time from the date such request is made, *not to exceed thirty days*") (*emphasis added*).

<sup>8</sup> In addressing the amount of time a company should acknowledge and respond to an SMS opt-out, the commission arbitrarily specified five minutes. FCC 12-143 ¶11 ("If the confirmation text is sent within five minutes, it will be presumed to fall within the consumer's prior express consent. If it takes longer, however, the sender will have to make a showing that such delay was reasonable.").

<sup>9</sup> FCC 04-204; 47 C.F.R § 64.1200(a)(1)(iv) ("A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) when the call is placed to a wireless number that has been ported from wireline service and such call is (A) a voice call; (B) not knowingly made to a wireless number; and (C) made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.").

### **III. Methods to revoke consent should produce a verifiable written record.**

CCIA wholeheartedly agrees with the crux of the Santander Petition: if the Commission decides to interpret the TCPA to include a right to revoke consent to certain messages, the caller may designate the reasonable, recordable, methods the user must use to effectively exercise that right. Under the patchwork of court decisions and ambiguous rules currently in place, businesses are subject to staggering liability for calls placed to existing customers who previously consented to calls, simply by declaring that consent was “verbally revoked” independent of any evidence to that fact. These indefensible allegations place businesses in an impossible situation, as businesses are unable to rely on user-provided prior consent for fear that it could be “revoked” based on an undocumented assertion, and are thus all but prohibited from communicating with users despite complying with the TCPA and FCC guidance in all other respects.

CCIA does not express a preference for one revocation method over another, but supports all methods proposed by Santander, including any additional proposals the Commission may deem fit, provided such proposals allow for a verifiable written record. Additionally, businesses should be permitted to specify the revocation methods it chooses to make available to users. A user must be provided reasonable alternatives for revoking consent. However, requiring a business to respond to every conceivable type of request is inefficient, creates uncertainty for users, and places undue burden on business. As communicated by Santander in its ex parte filing, this approach is consistent with existing consumer protection statutes and regulations that allow businesses to designate a process for such requests.<sup>10</sup>

CCIA also supports requiring a reasonable method of authentication to ensure the revocation request is valid and correctly applied. This approach addresses the privacy interest of

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<sup>10</sup> Santander, *Notice of Ex Parte Meeting Regarding the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (Aug. 11, 2014).

users, by ensuring the correct person's wishes are honored, and avoids liability to businesses, by allowing them to confirm the revocation request is processed against the correct user's account.

#### **IV. Conclusion**

For the reasons described above, CCIA respectfully urges the Commission to clarify: (i) that calls with the sole purpose of alerting users to potential fraud, identity theft, or negative financial impacts, or mitigation thereof, fall under the definition of "emergency purposes," and as such are exempt from the consent requirements of the TCPA; (ii) that once received, a company must act on a revocation request within 15 days and that companies shall not be liable under the TCPA for messages sent within this intermediary time interval; and (iii) that a verifiable written record must be submitted, through a company specified process that can reasonably authenticate the user, in cases where consent can be revoked.

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Respectfully submitted,

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