

November 30, 2020

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

RE: Capital One Services Petition on text message transmitted through an automatic telephone dialing system (ATDS) (CG Docket Nos. 18-152 and 02-278)

Dear Ms. Dortch:

The U.S. Chamber Institute for Legal Reform (ILR) represents a myriad of businesses who rely on making phone calls to inform their customers, and on behalf of those businesses, I write in support of Capital One Services' Petition¹ regarding text messages transmitted through an automated telephone dialing system (ATDS). Specifically, ILR encourages the Federal Communication Commission (FCC) to act swiftly on this Petition and issue a declaratory ruling confirming that the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient's opt-out request without violating the Telephone Consumer Protection Act (TCPA)², provided the message was a lawful informational text message and was part of a program in which the recipient had previously enrolled.

I. Clarity Surrounding the Scope of Opt-out Requests is Necessary for Businesses to Effectively Communicate with their Customers

The Chamber agrees with the comments submitted by the American Bankers Association (ABA), the National Association of Federally-Insured Credit Unions (NAFCU), ACA International, and the American Financial Services Association (AFSA). We are also pleased to see multiple consumer groups such as Consumer Reports and the National Consumer Law Center support the petition. Many

¹ Capital One Services, LLC, Petition for Declaratory Ruling, CG Docket Nos. 18-152 & 02-278 (Nov. 1, 2019), <https://www.fcc.gov/ecfs/filing/110141644656> [hereinafter, Petition].

² 47 U.S.C. § 227.

businesses use text message systems to communicate with their clients and consumers who should have the control to opt-out of text messages they do not wish to receive, but they should also be empowered to specifically choose the scope of their opt-out request. The problem is that oftentimes it is unclear whether the customer intends to opt-out of a specific category of informational message or *all* categories of informational messages.

Additionally, ILR is concerned that the current lack of clarity surrounding opt-out requests may pose a heightened risk of litigation which may have a chilling effect on legitimate businesses communicating with their customers. Specifically, legitimate businesses may be forced to cease all communication when they receive an unclear opt-out request because of potential liability under the TCPA. This may result in substantially decreasing the quality and quantity of information that consumers use to make informed decisions about the products and services they use. Therefore, the Chamber agrees with the aforementioned organizations and encourages the Commission to act on Capitol One Services' petition to ensure that consumers have complete control over the amount and quality of information they receive.

II. The *SoundBite* Declaratory Ruling³ Permits Businesses to Clarify the Scope of a Customer's Opt-out Request

The Commission ruled in February 2012 that “sending a one-time text message confirming a consumer’s request that no further text messages be sent does not violate the Telephone Consumer Protection Act (TCPA).”⁴ Furthermore, the Commission also concluded that “a consumer’s prior express consent to receive text messages from an entity can be reasonably construed to include consent to receive a final, one-time text message confirming that such consent is being revoked at the request of that consumer.” The Chamber supports the reasoning in the Petition that the Commission’s ruling in *SoundBite* should also apply to one-time text messages sent for the sole purpose of confirming the scope of the consumer’s opt-out request. As the Petition points out, “a consumer’s prior express consent to receive several different categories of informational text messages from a sender reasonably can be construed to include consent to receive a one-time text message clarifying whether the consent revocation applies to all text messages from that sender or only to the message category in response to which the ‘STOP’ reply was sent.”⁵

³ *SoundBite Commc'ns, Inc., Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391 (2012).

⁴ *Id.* at ¶ 7.

⁵ *Petition* at 6.

Provided the opt-out confirmation message does nothing more than confirm the scope of revocation (i.e., does not seek to persuade the customer to change their mind about their decision to opt-out of informational text messages), and if the consumer does not respond, then all future informational text messages will be discontinued. Under these circumstances, there should be no distinction between this type of communication and the permissible one-time text message confirming a consumer's request that no further text messages be sent under the TCPA. After all, the TCPA was enacted to protect the privacy and safety of consumers, not to limit their ability to effectively curate the information they receive from the businesses they transact with.

Accordingly, ILR urges the Commission to grant Capital One Services' petition. If you have any questions or need any additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Harold Kim", with a stylized flourish at the end.

Harold Kim
President
U.S. Chamber Institute for Legal Reform