



December 19, 2019

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

Reply Comments of  
Consumer Reports

Regarding the Petition for Declaratory Ruling  
Filed by Capital One Services, LLC

CG Docket Nos. 18-152 and 02-278.

Dear Ms. Dortch:

Consumer Reports submits these reply comments in the above-referenced matter.

Petitioner Capital One Services, LLC requests a declaratory ruling that, when a consumer sends, in response to a lawful informational text message transmitted through an automatic telephone dialing system ("ATDS"), a valid opt-out request, and the message is sent as part of a program in which the recipient has previously enrolled that lawfully transmits several categories of such messages, and the scope of the opt-out request is not clear, the sender of the message should be permitted to follow up with one message to ascertain the scope of the opt-out requested, without that being deemed to violate the Telephone Consumer Protection Act ("TCPA") or related Commission rules.

Petitioner clarifies that this follow-up message would not contain marketing or promotional content, or seek to persuade the consumer to reconsider the opt-out decision.

We agree with Petitioner, and with commenters from the financial services industry, that such a follow-up message can be helpful for the consumer, who may not have intended to opt out of all categories of informational messages. And for that reason, we agree that a declaratory ruling permitting such a follow-up message is appropriate and consistent with the TCPA. We note that this is also the position taken in comments submitted jointly by the National Consumer Law Center,

Consumer Action, Consumer Federation of America, and the National Association of Consumer Advocates.

At the same time, we also agree with those consumer organizations, as stated in their joint comments, that further clarification of the declaratory ruling is essential to ensure that it is appropriately circumscribed, so as not to inadvertently undermine the TCPA's core consumer protections – that the called-party must have given prior express consent to be called, and must be able to effectively revoke that consent.

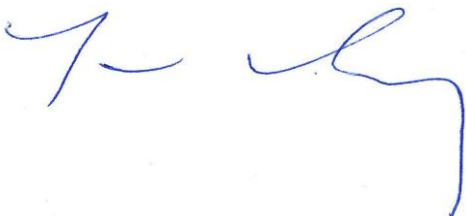
Specifically, we agree that the declaratory ruling should specify that:

- It applies only when the follow-up message contains the one clear and unambiguous question regarding the intended scope of the opt-out request, clear and unambiguous enough that the consumer can easily and simply answer the question.
- A lack of response to the follow-up message must be interpreted by the sender to be a confirmation that the consumer's opt-out request was intended to encompass all calls related to the program in question, and the sender must therefore cease all further automated calls and texts (except those specifically falling under Commission exceptions for emergencies and free-to-end-user).

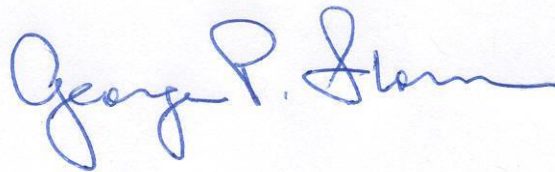
We note that Petitioner also essentially agrees with these clarifying conditions.

Additionally, we agree with the consumer organizations that the sender must keep complete records of the correspondence related to revocation of consent, so as to enable reliable verification of compliance.

Respectfully submitted,



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