



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Rules and Regulations Implementing the |) | CG Docket No. 02-278 |
| Telephone Consumer Protection Act of 1991 |) | |
| |) | |
| Petition for Declaratory Ruling, Perdue for Senate, Inc. |) | |

**Comments Opposing the Petition for Declaratory Ruling and Waiver
(with more than 90,000 consumer signatures attached)**

Consumer Reports

October 4, 2021

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Consumer Reports joined with several other consumer organizations in 2017 in opposing a petition seeking a new exemption from the Telephone Consumer Protection Act, and its core requirement that robocalls can be made to consumers only with their prior consent – an exemption for “ringless voicemail” robocalls. That petition was withdrawn before the Commission ruled. Now another petitioner is seeking the same exemption.¹

We urge the Commission to deny this petition, for the reasons expressed in the comments we submitted jointly against the 2017 petition,² and the reasons expressed in the comments being submitted today by the National Consumer Law Center, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, Electronic Privacy Information Center, and US PIRG, with which we are in substantial agreement. Those reasons are reiterated here.

Consumer Reports is commenting separately in order to submit the signatures we collected from consumers whom we alerted and invited to express their opposition. In the space of just one week, 90,158 consumers asked us to inform the Commission that they are strongly opposed to creating this new loophole that would subject them to an unlimited onslaught of unwanted robo-voicemails filling their phone’s voicemail box.³

The Commission, and the courts, have previously made clear that texts are considered “calls” for purposes of the TCPA, despite the fact that they do not “ring” on the consumer’s

¹ <https://ecfsapi.fcc.gov/file/10702030121344/RVM%20Petition.pdf>.

² https://advocacy.consumerreports.org/press_release/fcc-urged-to-protect-consumers-from-unwanted-telemarketing-and-debt-collection-voicemails/; <https://advocacy.consumerreports.org/research/joint-reply-comments-to-the-fcc-on-advanced-methods-of-blocking-robocalls/>.

³ See attachment. As to the potential order of magnitude of the onslaught that could be expected, Drop Cowboy, just one of many companies already offering ringless voicemail service to business clients, advertises on its website a plan that delivers up to a third of a million ringless voicemails per month for a single client. <https://www.dropcowboy.com/pricing/>.

phone in the same way that a traditional voice call does.⁴ There is no sound rationale for treating differently messages that bypass the phone's ringtone and are left in its voicemail box. Indeed, a number of courts have held that ringless voicemails are calls, requiring prior consumer consent under the TCPA.⁵

Although ringless voicemail messages cleverly bypass the phone's ringtone alert, they engage the consumer's wireless service account in key ways:

- They use the mobile phone number assigned to the consumer's wireless service account.
- They leave a message on the mobile phone with which the consumer's wireless service account is associated.
- They generally trigger the mobile phone to send a visual alert to the mobile phone's screen, or to send an audible alert, or both.
- They require the consumer to open the message on the wireless service in order to listen to it and find out who it is from and its content – unless the consumer's wireless service already engages the wireless system to send a transcript to the phone.

These ringless voicemail messages are every bit as unwelcome, invasive, harassing, and harmful as voice robocalls and robo-texts.

In one important respect, they are even worse: They can fill up the limited capacity in a phone's voice message storage function. Indeed, a single voicemail can run several minutes. As a result, important messages – including emergency messages, even critical time-sensitive life-or-death messages – can be blocked out.⁶ And even when those important messages are not blocked out entirely, they can easily get buried in the pile of unwanted spam and scam.

⁴ *In re* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961 ¶¶ 113 – 122. (2015); *e.g.*, *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952-954 (9th Cir. 2009).

⁵ *E.g.*, *Gurzi v. Penn Credit Corp.*, 449 F. Supp. 3d 1294, 1298 (M.D. Fla. 2020); *Schaevitz v. Braman Hyundai, Inc.*, 437 F. Supp. 3d 1237 (S.D. Fla. 2019); *Saunders v. Dyck O'Neal, Inc.*, 319 F. Supp. 3d 907, 911 (W.D. Mich. 2018).

⁶ *See, e.g.*, comment of Paul Strong, Steamboat Springs, CO, <https://www.fcc.gov/ecfs/filing/10605178204139>.


Furthermore, a voicemail message counts as data, and listening to it counts as minutes. So for the millions of consumers on limited plans, ringless voicemail messages can exhaust the monthly limits and render phones useless for the remainder of the month.⁷

And they are also worse in another important respect: Available technology enables many if not all unwanted voice robocalls and robo-texts coming through the usual wireless pathway to be caught and blocked, particularly from specified robocallers. There currently is not the same capability to catch and block a ringless voicemail. So consumers are even more powerless to limit or stop them. Without the TCPA's legal prohibition against them, they would quickly become relentless.

In all important respects, ringless voicemail messages constitute the exact kind of invasion of privacy, unwanted harassment, and potential for cost and harm that Congress intended to put a stop to in enacting the TCPA.⁸

On behalf the more than 90,000 consumers in the attached list, and the many millions of consumers we speak for, Consumer Reports urges you not to open the floodgates to consumers' voicemail boxes being polluted with a deluge of unwanted messages that they would be powerless to stop.

Respectfully,



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⁷ See, e.g., comment of Ilene Richman, New York, NY, <https://www.fcc.gov/ecfs/filing/106041544923987>; comment of Mary Jane Ferrell, Middlebourne, West Virginia, <https://www.fcc.gov/ecfs/filing/10607136188818>.

⁸ See, e.g., *Schaevitz v. Braman Hyundai, Inc.*, 437 F. Supp. 3d 1237, 1250-1251 (S.D. Fla. 2019).