

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act)	

**REPLY COMMENTS OF ACA INTERNATIONAL
AND
THE CREDIT UNION NATIONAL ASSOCIATION**

ACA International (“ACA”)¹ and the Credit Union National Association (“CUNA”)² submit these reply comments in the above captioned proceeding. All commenters recognize that consumers have the right to revoke consent using reasonable methods. The calling community, however, recommends that the Commission codify reasonable limits on the methods of revocation that acknowledge the realities of revocation processes. There is a strong consensus, including consumer groups, that providing clarity and specificity on reasonable methods helps consumers by providing assurances that revocations will be honored. Callers that fail to timely honor revocation requests using prescribed means will likely face lawsuits. On the other hand, consumers that use other methods should recognize that their revocation requests will take longer

¹ ACA International represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women. ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve their past debts, which in turn saves every American household more than \$700 year after year. The ARM industry is instrumental in keeping America’s credit-based economy functioning with access to credit at the lowest possible cost.

² The Credit Union National Association, Inc. (CUNA) is the largest trade association in the United States representing America’s credit unions, which serve more than 135 million members. Credit unions are not-for-profit, financial cooperatives established “for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes.”

to process and they should face a heightened burden to demonstrate reasonableness. To further facilitate the efficient processing of revocation requests, the Commission should confirm that callers may enforce contractually prescribe reasonable means of revocation. Finally, the record overwhelmingly demonstrates that the Commission's proposed 24-hour time frame to honor revocations is not practicable.

I. Virtually All Commenters Recommend a Longer Period than 24 Hours to Honor Opt-Out Requests

The initial comments are virtually unanimous in recommending a longer period of time by which to honor revocation requests than the 24-hour period proposed by the Commission. The consumer groups recognize that a 24-hour period is not practical and recommend a longer time frame, perhaps as long as 14 days in the first of year of implementation and two business days thereafter.³ Numerous callers echoed the concerns raised in ACA's and CUNA's initial comments that opt-out processes, even when mechanized, often are unable to effectuate a revocation request within the proposed time frame.⁴ Commenters suggested time frames ranging from 72 business hours to retaining the current 30-day time frame.⁵ ACA and CUNA reiterates that 10 business days, as set forth in CAN-SPAM Act, constitutes a reasonable middle ground, as does the Edison Electric Institute and National Rural Electrification Cooperative Association.⁶

³ Reply Comments of the National Consumer Law Center *et al.* at 4 (NCLC *et al.* Reply Comments).

⁴ *See, e.g.*, Comments of ACA International and the Credit Union National Association at 6-8 (ACA/CUNA Comments); Comments of the Cargo Airline Association at 4 (noting need to coordinate vendors) (CAA Comments); GECU Federal Credit Union at 2 (noting that system failures may prevent 24 turn around); Comments of the Edison Electric Institute and the National Rural Electric Cooperative Association at 14-15 (EEI/NRECA Comments); Comments of UnitedHealth Group at 3.

⁵ *See, e.g.*, Comments of NCTA – The Internet & Television Association at 5, n. 11 (NCTA Comments) (proposing 72 hours using counting rules adopted for Traceback request responses); Comments of the American Bankers Association *et al.* at 15 (six business days) (ABA *et al.* Comments); CAA Comments at 6 (6 business days); Comments of the National Association of Mutual Insurance Companies at 3 (14 days) (NAMIC Comments); Comments of the Mobile Ecosystem Forum Comments at 6-7 (24 hours for text messages utilizing specified key words, otherwise 30 days).

⁶ EEI/NRECA Comments at 14-15; ACA/CUNA Comments at 16.

The Commission should also recognize that a reasonable period of time by which to honor a revocation request is very much dependent on the breadth of the Commission's related rulings. A rule enabling consumers to revoke consent by any reasonable means with no ability for callers to prescribe a set of easy-to-use mechanisms will require more time to honor as callers coordinate diverse vendors and business groups. Similarly, providing that a single revocation request stops all future calls and texts, no matter the subject, will not only harm consumers, but creates complex repercussions that need appropriate time for coordination. To maximize the ability of callers to promptly honor revocation requests, the Commission should, as set forth below, permit callers to prescribe a limited set of mechanisms to revoke consent. To ensure these are reasonable and easy-to-use, the Commission should define those means with more specificity.

II. The Commission Should Authorize Callers to Prescribe Reasonable Means of Revocation, Including Use of Key Words

Automated processes cannot be programmed to recognize an virtually infinite combination of words and phrases that could reasonably be interpreted as a clear expression of consumer's desire to stop further communications. The Commission can best serve the consumers' interest in prompt action on revocation requests by specifying reasonable means that callers can prescribe, such as a limited set of keywords that are common synonyms of STOP, which is the universally recognized method to prevent further text messages.⁷ As an accommodation to consumers, and consistent with industry practices promulgated by entities such as CTIA and the Mobile Marketing Association, most text platforms already are programmed to recognize a set of

⁷ See, e.g., Comments of Vibes Media, LLC at 6-9; Comments of the Mobile Ecosystem Forum at 3; EEI/NRECA Comments at 12.

these key words even though the text informs the recipient to reply with STOP if no further texts are wanted.⁸

The Commission should, therefore, adopt a standard, but limited, set of words or short phrases that all texting platforms should be required to recognize. NCLC does not oppose the concept of specifying certain means, but argues that use of these specific mechanisms should constitute definitive proof of revocation, in other words, an irrebuttable presumption of revocation that callers could not challenge in court.⁹ It then argues that consumers who nevertheless choose to use another “reasonable” means should nevertheless be afforded a rebuttable presumption of reasonableness, stating that the courts are fully capable of resolving disputes on what qualifies as reasonable.

NCLC has it backwards, and its suggestion that the courts can determine reasonableness on a case-by-case basis is merely a prescription for more opportunistic litigation and ignores the burdens and compliance complexities that such litigation imposes on callers. Instead, callers that use Commission-prescribed processes and honor compliant revocation requests within whatever time period the Commission ultimately adopts should be given their due. That could be in the form of a safe harbor for callers that make available a variety of easy to use and find mechanisms, as suggested by NCTA¹⁰; or through shifting the burden to consumers to show by clear and convincing evidence that their non-conforming means was reasonable, as

⁸ ACA & CUNA Comments at 9-10.

⁹ NCLC derisively refers to these keywords, as “magic” words. NCLC *et al.* Reply Comments at 3. But the keyword concept derives from the same set of CTIA texting best practices that NCLC otherwise touts as helping to protect consumer interests. NCLC *et al.* Comments at 9.

¹⁰ NCTA Comments at 2-3.

recommended by EEI.¹¹ The Commission should develop a fair and balanced allocation of judicial burdens.

III. Callers Should Be Able to Enforce Reasonable Means of Revocation Specified by Contract

The Commission has not addressed the question of whether companies may contractually prescribe reasonable methods of revocation.¹² This is a somewhat different question than whether a consumer may unilaterally revoke consent where the consumer has, in a binding contract (not gratuitously), simply consented to receive robocalls or robotexts. Although the weight of judicial authority holds that consumers may not revoke consent in those circumstance,¹³ commenters have asked the Commission to address a more specific question, which is whether callers may, by a binding contract, specify and enforce reasonable *means* of revocation.¹⁴

The comments of NCLC *et al.* spend several pages arguing that callers, and creditors in particular, may not preclude consumers from revoking consent by “inserting provisions in form agreements purporting to authorize” robocalls.¹⁵ The Commission need not address that question to resolve the issue raised by in the record that companies may enforce bargained-for means of revocation. Courts have upheld the right of companies to enforce contract language specifying the *means* of revocation as distinguished from precluding revocation based simply on language agreeing to be called using an autodialer or prerecorded voice.¹⁶ NCLC’s lengthy defense of the

¹¹ EEI Comments at 13 (recommending consumers using other means be required to prove reasonableness by clear and convincing evidence).

¹² ACA/CUNA Comments at 14 & n. 29.

¹³ See, e.g., *Reyes v. Lincoln Auto Fin. Servs.*, 861 F.3d 51 (2nd Cir. 2017); *Medley v. Dish Network, LLC*, 958 F.3d 1063 (11th Cir. 2020).

¹⁴ ACA/CUNA Comments at 14; ABA *et al.* Comments at 10-11; Vibes Media Comments at 10-11.

¹⁵ NCLC *et al.* Comments at 10-13.

¹⁶ See *Few v. Receivables Performance Mgmt. LLC*, 2018 WL 5923765 (N.D. Ala. Nov. 13, 2018). Relying on *Osorio v. State Farm Banking, FSB*, 746 F.3d 1242, 1255 (11th Cir. 2014), which found that a

right to revocation despite generalized contract consent language is a straw man argument that the Commission may set aside when considering whether companies may enforce a bargained-for, reasonable limitation on the means of revocation.

The ability of companies such as financial services firms to specify means of revocation becomes particularly important to consumers where consent to receive robocalls or robotexts is a condition of accessing a service, such as mobile banking. Requiring consumers to use specified methods of revocation helps ensure that important on-line services are not inadvertently discontinued due to a generalized request for revocation that may be sent to a completely separate line of business. Specifying a reasonable means of revocation is not designed to create roadblocks to consumers, but to ensure that the consumer and the company are on the same page regarding the consumer's desire to revoke.

consumer may orally revoke consent absent any contractual restriction to the contrary, *Few* concluded that general consent to be called was not a qualifying contractual restriction under *Osorio*, but that contract language specifying the means of revocation can be enforced. *See also Thompson-Harbach v. USAA Federal Savings Bank*, 359 F.Supp.3d 609, 629-30 (N.D. Iowa 2109); *Barton v. Credit One Financial*, 2018 US Dist. LEXIS 72245 (N.D. Ohio 2018). The 11th Circuit later distinguished *Osorio* on the grounds that general consent in that case was given gratuitously and held in *Medley v. Dish Network LLC*, that bargained-for consent to be called language in a binding contract precludes unilateral revocation of consent. 958 F.3d at 1070. As discussed in the text, the Commission need not address that broader question to confirm that companies may enforce contractually-specified means of revocation.

CONCLUSION

The record overwhelmingly supports adopting reasonable limitations on the means by which consumers may revoke consent that balances the interests of both consumers and businesses. ACA and CUNA respectfully recommend allowing 10 business days to honor revocation, recognizing that response times are highly dependent on the means of revocation used by consumers and the scope of those requests.

Respectfully Submitted,

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